IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D., 1975

CASE NO. 47,674

JACK WILSON et al.,

Petitioners,

vs.

JACK SANDSTROM, Director
Department of Corrections and Rehabilitation,
Dade County, Florida, et al.,

Respondents.

And

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
a Florida limited partnership,

Appellee.

Opinion filed July 21, 1975

Case of Original Jurisdiction—Habeas Corpus

An Appeal from the Circuit Court in and for Dade County,
Harvie S. DuVal, Judge

Richard A. Pettigrew and Guy B. Bailey, Jr. of Pettigrew and Bailey, for Petitioners-Appellants.

Robert L. Shevin, Attorney General; and James Dudley Whisenand, Assistant Attorney General; and Marion Sibley of Sibley, Giblin, Levenson and Ward; and Patton, Kanner, Nadeau, Segal, Zeller & LaPorte, for Respondents-Appellees.

ADKINS, C.J.:

This is an original proceeding in habeas corpus wherein 18 owners of racing greyhounds seek relief from incarceration resulting from violation of an injunctive order of the circuit court entered July 8, 1975. A return to the petition has been filed.

We also have under consideration a review by interlocutory appeal of an order of the circuit judge entered July 3, 1975, granting a mandatory temporary injunction. Our jurisdiction was determined in *Wilson v. Sandstrom*, Case No. 47,674, opinion filed July 17, 1975.

For clarity, West Flagler Associates, Ltd., the owner and operator of the race track is hereinafter referred to as Flagler; the owners of the greyhounds used at the race track are referred to as the kennel owners.

Flagler instituted suit against the kennel owners and a kennel owners' association seeking a temporary and permanent mandatory injunction requiring the defendants to comply with contracts for furnishing greyhounds to the race track commencing July 3, 1975. The State of Florida and Metropolitan Dade County were allowed to intervene as parties-plaintiff.

Flagler alleged that under the contract it granted exclusive right to the named kennel owners to race their dogs and agreed to furnish purses, and that Flagler has complied with the contract. Flagler was licensed to operate from July 3, 1975, through September 4, 1975, from November 1, 1975, to January 9, 1976, and from May 1, 1976, to July 2, 1976. The contracts between Flagler and the kennel owners encompass these dates and were identical as to form.

Under the contracts the kennel owners agreed not to take any action which would be detrimental to the race track and greyhound racing. It was specifically provided that the kennel owners would not do any act which would bring about a temporary or permanent cessation or suspension of racing during the period of time covered by the contract.

It was alleged that under the rules of the Department of Business Regulation the kennel owners were required to present their dogs for schooling in June for the race meet commencing July 3, 1975. On June 10, 1975, the kennel owners threatened Flagler with indeterminate action. As a result, Flagler alleges it would be unable to conduct its race meet; that the kennel owners are required to supply "chattel of unusual and unique character; namely, racing greyhounds which are not readily obtainable in the ready market". Flagler alleges that it will not be able to get the owners to supply greyhounds and suffers irreparable damage for each day it is not open. It was also alleged that, if notice were given the dog owners, the dogs may be removed from the jurisdiction.

Pursuant to the sworn complaint, the court, on June 30, 1975, without notice, issued a temporary injunction restraining removal of the dogs from the jurisdiction and ordered a hearing to be held on July 3, 1975. On July 3, 1975, the kennel owners appeared and announced that a petition for removal to the Federal court had been filed. Therefore, they would not participate in the hearing. Their request for permission to withdraw from the hearing was granted.

At 5:55 p.m. on July 3, 1975, the Federal court of its own motion remanded the cause to the State court. The State court was still in session at the time of the entry of the order of remand and at 6:10 p.m. on July 3, 1975, an order was entered granting the temporary mandatory injunction. This order recited that the State of Florida was suffering a loss of tax revenue of $64,000 per day, and that Flagler was suffering irreparable damage because of the kennel owners' refusal to supply dogs. The court ordered immediate compliance with the contracts by the filing of entries not later than July 4, 1975, at 10:00 a.m.; that upon refusal of the kennel owners to file entries that Perrine Palmer take custody and control of the dogs for the purpose of running them.

The kennel owners refused to submit their entry and Palmer attempted to take control of the dogs. Because of the number of dogs and inability to get adequate help, a hearing was held at the request of the receiver on July 5, 1975. Custody of the dogs was thereupon returned to the kennel owners, who were informed that a contempt hearing would be held on Monday, July 7, 1975.

On the morning of July 7, 1975, prior to the contempt hearing, the kennel owners filed a notice of interlocutory appeal seeking review of the order of July 3, 1975. This appeal has been transferred to this Court.

At the hearing on July 7, 1975, each kennel owner was called to the stand and interrogated concerning his knowledge of the order and whether he had willfully and deliberately refused to comply with the order of July 3, 1975. On July 8, 1975, the kennel owners were adjudged guilty of contempt and 18 of them were incarcerated in the Dade County penal facilities. These are the petitioners in the habeas corpus proceeding.

The kennel owners say that the order of July 3, 1975, imposing a mandatory injunction exceeded the jurisdiction of the circuit court. It is contended the mandatory injunction could not be granted until after final hearing, citing *F.E.C. Railway Co. v. Taylor*, 47 So. 345 (Fla.1908), and *Montgomery Pipe & Tube Company v. Mann*, 205 So.2d 660 (Fla.App.3d 1968). Flagler says that temporary mandatory injunction may be granted where it appears that plaintiff has a clear right to invoke the remedy free from reasonable doubt.

In *Kellerman v. Chase & Co.*, 135 So.127 (Fla.1931), Chase & Co. had purchased a crop of tomatoes by contract from Kellerman and others. Upon the failure to deliver, Chase & Co. applied to the circuit court and secured a temporary mandatory injunction requiring Kellerman to deliver the tomatoes. In upholding the validity of the temporary mandatory injunction, this Court said:

> "It is a general rule that a mandatory injunction can only be properly granted on a final hearing,

as its effect before that time is like awarding execution before trial and judgment. See Fla. East Coast Rwy. Co. v. Taylor, 56 Fla. 788, 47 So. 345 and cases there cited. However, in this case it not only appears that the plaintiff has a clear right free from reasonable doubt to invoke the remedy, but it also appears that to delay the remedy would necessarily involve a denial of the right because it is shown positively by both the allegation of the bill and the proof submitted that the tomato season covers a period of only some five or six weeks, and it is a matter of common knowledge that the tomato crop is of the most perishable character.

"In Zetrouer v. Zetrouer, 89 Fla. 253, 103 So. 625, 626, this court, speaking through Mr. Justice Terrell said:

> 'It is well settled that mandatory injunctions are rarely granted before final hearing, or before the parties have full opportunity to present all the facts in such manner as will enable the court to see and judge what the truth may be; however, instances are not wanting where relief by mandatory injunction was granted on the proper showing made. Taylor v. Florida East Coast R.R. Co., 54 Fla. 635, 45 So. 574, 16 L.R.A. (N.S.), 307, 127 Am. St. Rep. 155, 14 Ann.Cas. 472; Florida East Coast R. Co. v. Taylor, 56 Fla. 788, 47 So. 345; City of Ocala v. Anderson, 58 Fla. 415, 50 So. 572; 14 R.C.L. 317.'"

A mandatory temporary injunction may be issued requiring specific performance of a contract. *Bowling v. National Convoy and Trucking Co.*, 135 So. 541 (Fla.1931). See also, *Price v. Gordon*, 177 So.276 (Fla.1937). In *Daniel v. May*, 143 So.2d 536 (Fla.App.2d 1962) a mandatory temporary injunction was issued to require the defendants to remove a building encroaching on a setback line.

We conclude as a general rule, that a temporary mandatory injunction is proper where irreparable harm will otherwise result, the party has a clear legal right thereto, and such party has no adequate remedy at law. In the case *sub judice* we are confronted with a fourth consideration, i.e., the public interest.

Public consideration was specifically recognized by the Court in *F.E.C. Railway Co. v. Taylor*, *supra*, cited by the kennel owners, when the Court declined to issue a mandatory temporary injunction to force the railroad to build a spur track and depot. The rationale for not issuing the injunction was the detriment to the paramount public interest.

State Road Department v. Fugoli, 123 So.2d 473 (Fla.App.1st 1960) involved a situation where the State sought such an injunction for the removal of property encroaching on the public right of way. The appellate court in holding that mandatory injunctive relief was appropriate, said:

> "The relief contemplated should be readily available where the public right or injury to many is concerned, and is to be distinguished from those cases where injunctive relief may be deferred

> without undue hardship pending the result of an action at law. Such considerations drive to the very heart of the inherent power of courts of equity to provide the type of relief here sought. 123 So.2d at 475."

In *Zetrouer v. Zetrouer*, 103 So. 625 (Fla.1925), this Court affirmed the issuance of a mandatory temporary injunction to require defendants to open a road and remove a fence.

The record clearly shows that Flagler had a clear legal right to the issuance of an injunction and that irreparable harm would result if such injunction were not issued. Also, the State of Florida, through the loss of an estimated $64,000 a day in revenue, is irreparably harmed in that there is no other source to offset this loss of revenue. Furthermore, the State is losing the confidence of the public in its ability to properly regulate the gambling activities in pari-mutuel wagering. The State Deputy Economist testified to the tremendous impact that greyhound pari-mutuel revenue loss will have upon the budgets of the State and counties. The Finance Director of Dade County submitted an affidavit stating that the budget for the county fiscal year beginning October 1, 1975, had been established in reliance upon the continued receipt of funds derived in part from pari-mutuel dog racing activities in Dade County.

Furthermore, the State of Florida has granted to Flagler specific dates for racing — July 3rd to September 4th. Once these racing days are lost, they may be lost forever, as another track is scheduled to open on the day Flagler is scheduled to close. In addition, the damage to

Flagler in the minds of the public resulting from this boycott and refusal of the kennel owners to perform their contracts cannot possibly be measured in dollars and cents.

There is no adequate remedy at law. The trial court, sitting as a court of equity, certainly had the power and authority to protect the public interest or rights and also to avoid injury to many who are concerned with the continued operation of the track and the receipt of funds from the pari-mutuel revenues.

Regardless of the authority of the court to enter such an injunction, the kennel owners say that the contract is primarily one for a personal service and incarceration for failure to comply with the provisions of a contract requiring personal services amounts to involuntary servitude, thereby violating the provisions of the United States Constitution, Thirteenth Amendment, §1. We must first consider whether the contract does, in fact, relate to personal services.

In considering the contracts and the rules of the Board of Business Regulation relating to greyhound racing (Ch. 7E-2), it appears that the kennel owners had a contractual obligation to produce racing greyhounds at the track, while all things relating to the registration, training, etc., of the greyhounds prior to production of the greyhounds were prescribed and limited by the rules and regulations of the Board of Business Regulation.

The owners of greyhounds have no control over the greyhounds after they are brought to the track for a race. According to the rules, an owner must bring the greyhound to the track at least one hour before post time of the first

race of each program of each day. Rule 7E-2.14(3). The greyhound is then weighed in and placed "in lock out kennels under the supervision of the paddock judge and *no owner* or other person excepting the paddock judge, veterinarian, kennel master, scales clerk, lead out, judges or commission representatives shall be allowed in or near the lock out kennel". Rule 7E-2.14(12). This means that the representative of the kennel owner is required by rules of the Board of Business Regulation to present his greyhound to Flagler at least one hour before the first race. The greyhound is then placed in a lock out pen, and no person is permitted to approach that pen except officials designated by the rules.

Thereafter "under the supervision of the paddock judge, the kennel master shall unlock the lock out kennels immediately before weigh-in time to see that the kennels are in perfect repair and that nothing has been deposited in any of the kennels for the greyhounds' consumption . . ." Rule 7E-2.15(3). This means that just prior to the race the official of the Department of Business Regulation or those designated by the rules will unlock the lock out pen, inspect the greyhounds and thereafter they will be reweighed and the identification re-inspected. The greyhounds are led to the starting post by grooms provided by the track operation and licensed by the Department. Rule 7E-2.16.

It thus appears that under the rules regulating greyhound racing, the owner, trainer, or helper or agent of the owner has absolutely nothing to do with the greyhound except to present it to Flagler at least one hour before the first race. The owner's responsibility for the condition of the dog is established and regulated by the rules relating

to greyhound racing. The contracts make no changes in this responsibility. The duties and obligations of the owners and trainers relative to the training and schooling of the greyhounds are to the State, not to Flagler. The kennel owners supply a unique product, not readily obtainable on the market, and the contract merely provides that this unique product be produced by the kennel owner at a specified time.

A contract is properly considered a personal service contract when it involves one such as a football player or boxer signing to perform a game or a match. In the case *sub judice* the kennel owners simply contracted to furnish greyhounds properly schooled and trained under the regulations of the State of Florida for racing purposes at Flagler. A greyhound is not a "person" as provided in the United States Constitution, Amendment Thirteen, §1.

Even if we assume that some personal service is involved in the requirement that the kennel owners produce their unique product, temporary relief should nevertheless be granted. As stated in 17 *Fla. Jur., Injunctions*, §37, p. 397, 398:

> "Contracts of Service.
>
> Many of the cases in which equity has been asked to enjoin a breach of contract arise from disputes concerning contracts for personal services. Underlying the exercise of the injunctive power in such cases is the difficulty of replacing such service, and the inadequacy of damages as compensation for such loss. Injunctive relief, therefore, is often invoked to prevent violation of contracts calling

> for personal services or acts of a special character, or for such services by persons of eminence in their calling, possessing special qualifications. It follows clearly that reasons for equitable intervention are wholly lacking in cases of ordinary employment, where no personal contract or peculiar influence of the employee over the customers of his employer exists, and where the services are without special merit and are such as can be readily supplied or obtained from others without much difficulty or expense. In such cases injunctive relief will be denied."

Some of the contracts under consideration were executed more than a year prior to the beginning of the racing season, but all were executed at least five months prior to the beginning of the racing season. On June 10, 1975, the kennel owners advised Flagler by Notice of Intent dated June 10, 1975, as follows:

> "We the undersigned representatives of the attached list of kennel owners at West Flagler Associates Limited, have been authorized to serve you with this notice in accordance with Greyhound Racing Rules and Regulations # 7E 2.02(21)(b).
>
> "Please be advised that we wish to enter into immediate negotiations on all matters between the kennel owners and the track, relating to the meet which commences at your track on July 3, 1975. The purpose of this notice is to advise you and the State of Florida, that in the event you refuse to negotiate these matters in good faith,

> that the individual kennel owners may take such action which may affect the public welfare, and such action may be taken on or after June 25, 1975."

Obviously, the underlying reason for breach of the contract was hope for better provisions. There is no allegation or contention relating to fraud or duress in the execution of the contract. Flagler seeks the enforcement of the contract while the kennel owners demand that the terms be re-negotiated.

The case *sub judice* is not similar to *Pinellas County Classroom Teachers' Association, Inc. v. Board of Public Instruction*, 214 So.2d 34 (Fla.1968), where an order of the trial court enjoining public school teachers from striking and giving them alternatives of working and complying with their contracts, or terminating their contracts, was affirmed by this Court. A "strike" contemplates employment. The kennel owners are independent contractors, fitting the definition in 17 *Fla. Jur., Independent Contractors*, §2, p.174:

> "Another commonly accepted definition is that an independent contractor is one who, in the exercise of an independent employment, contracts to do certain work according to his own methods, and without being subject to the control of his employer except as to the product or result of his work.
>
> "The difference between an independent contractor and a servant is well recognized, the chief distinction being the right of control over the work."

The kennel owners contracted to provide greyhounds which were properly trained and schooled under State regulations. They were not subject to the control of Flagler except as to the product or result of their work. When the greyhounds were delivered to the track, the kennel owners exercised no further control over the greyhounds. This relationship contains all the elements of an independent contractor as opposed to an employee.

The kennel owners say that the contract does not contain sufficient mutuality of obligations so as to allow it to be enforced by mandatory injunction. The terms of any contract should be such that at least some of them might be enforced against the other party to the contract. As stated in 17 *Fla. Jur.*, *Injunctions*, §35, p. 396:

> "For the injunctive remedy to apply to restrain the breach of a contract, the contract must be certain and unambiguous in its terms. Further, the contract should be one in which there is mutuality of remedy as well as of obligation. That is, the terms must be such that equity might enforce at least some of them against the other party to the contract. This does not mean, however, that each party need have precisely the same remedy in form, effect, or extent. A mere difference in rights stipulated does not necessarily destroy mutuality of remedy. Thus the fact that a lease is terminable at the option of one party only does not preclude that party from enjoining a breach of its terms by the other."

The contracts in question give the kennel owners the right to withdraw dogs providing adequate notice of the

reasons for the withdrawal is given to the track. The track cannot arbitrarily refuse the owners' withdrawal or substitutions. It also provides that in the event of the withdrawal of dogs, either the track operator or the kennel owner may pursue any legal or equitable remedy, including a complaint to the State of Florida.

The contract is clear and unambiguous as to its terms. In consideration of the kennel owners' agreement to furnish the dogs, the track owner is required to accept the dogs tendered by the kennel owners and pay to the kennel owners a specified consideration for the furnishing of the dogs.

The contract does not give any party unbridled discretion to do or refuse to do any act. The kennel owners could enforce the contract just as Flagler. The contention that there is lack of mutuality is without merit.

The kennel owners contend that the notice of interlocutory appeal directed to the order granting the mandatory injunction automatically stayed the mandatory injunction and the subsequent hearing and order holding the kennel owners in contempt was erroneous or void.

Under general law, in other jurisdictions, a mandatory injunction is automatically stayed by an appeal from the order or decree granting it. 42 Am. Jur.2d, Injunctions, §348. An annotation entitled, "Stay of Injunction by Appeal", 93 ALR 723, recognized that Florida General Statutes of 1920, §2922 and §3170, departed from the general rule and provided that any injunction could be suspended if authorized by supersedeas order of the court. This statute was incorporated in *F.S.* §59.13, which, in turn, was incorporated as Rule 5.1, Florida Appellate Rules, which provides as follows:

> "When it shall be made to appear to the lower court that an appeal to review an interlocutory order or decree in equity has been or is about to be taken to the Court, the lower court may, in its discretion, grant a supersedeas or stay upon appellant's giving a good and sufficient bond conditional that such appeal shall be taken within 10 days, and to pay all costs, damages and expenses occasioned by reason of the stay of proceedings, together with such other and further conditions as may be fixed by the lower court in the event the order or judgment of which a review is sought is not quashed, modified or reversed."

Under this rule the interlocutory appeal would not operate as an automatic stay of the temporary mandatory injunction. An application for supersedeas must be made to the trial court or to the District Court of Appeal.

The kennel owners sought a stay from the trial court and in the District Court of Appeal, Third District, which were denied. Under our rules of procedure a mandatory injunction is not automatically stayed by an appeal, but only upon supersedeas.

City of Miami v. Cuban Vill-Age Co., 143 So.2d 69 (Fla.App.3d 1962), cited by the kennel owners, involved an appeal from orders prohibiting certain actions by the City and compelling other actions. The court held that the notice of appeal was effective to stay the operation of a mandatory injunction. The City was not required to furnish a supersedeas bond under a then existing statute, so the formal application for a supersedeas was unnecessary.

However, a litigant who may be required to post a bond must, of course, make formal application for a supersedeas in order to gain a stay.

In the case *sub judice* the interlocutory appeal did not operate as an automatic stay of the temporary mandatory injunction.

The kennel owners say the attempted Federal removal ousted the trial court of jurisdiction and the order granting the mandatory injunction on July 3rd was erroneous. When removal is shown to be improper the State court's actions are not void. *F & L Drug Co. v American Central Ins. Co.*, 200 F.Supp. 718 (Dist.Ct. Conn. 1961).

In *Metropolitan Casualty Ins. Co. v. Stevens*, 312 U.S. 563 (1941) the Supreme Court rejected a similar argument. Although that case proceeded under an earlier version of the removal law, the jurisdictional proscription was similar:

> "While the opinion does not expressly consider the effect of a petition for removal on subsequent proceedings in the state court, the clear import of the decision is that the proceedings are valid if the case was not in fact removable.
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> • • •
>
> "The rule that proceedings in the state court subsequent to the petition for removal are valid if the suit was not in fact removable is the logical corollary of the proposition that such proceedings are void if the cause was removable. 312 U.S. at 566."

Furthermore, in 76 C.J.S., Removal of Causes, §239, it is stated:

> "Where the right to remove a cause from a state court to a federal court does not in fact exist, and after an attempted or colorable removal the cause is remanded by the federal court for want of jurisdiction, the jurisdiction of the state court is to be regarded as never having been lost, the federal court never having acquired jurisdiction; or at most the state court is said to have merely had its jurisdiction suspended during the period of the attempted or colorable removal of the cause. Proceedings had in the state court after the attempted removal and pending the remand are generally held to be valid and effectual, except, perhaps, where such proceedings were in violation of an injunction lawfully issued by the federal court; but there is authority to the contrary."

In the case *sub judice* the cause was remanded to the State court within hours after the petition for removal was filed. The cause was remanded at 5:55 p.m. on July 3rd and the injunction order was entered at 6:10 p.m. on July 3rd, after the cause had been remanded. The trial court had jurisdiction.

We conclude that the order of July 3, 1975, granting the mandatory injunction was within the jurisdiction of the court and error has not been shown. We also conclude that the trial court had jurisdiction to consider the contempt proceedings of July 8th.

The record clearly demonstrates that the kennel owners willfully and deliberately violated the injunctive order of the court. The courts and judges have inherent power by due course of law to punish by appropriate fine or imprisonment or otherwise any conduct that in law constitutes an offense against the authority and dignity of a court or a judicial officer in the performance of judicial functions. *State ex rel. Buckner v. Culbreath*, 3 So.2d 380 (Fla.1941). The sole reason for the incarcertaion of the kennel owners was their willful failure to comply with the temporary injunctive order of the court. Just as in any other contempt proceedings, the kennel owners carry the keys of their prison in their own pocket. *Demetree v. State*, 89 So.2d 498 (Fla.1956).

In an effort to renegotiate an existing contract by ignoring an injunctive order of the judiciary, the kennel owners have gravely affected the public interest, the revenue of the State of Florida and the revenue of individual counties. Misunderstandings among parties should be adjusted where possible without litigation, for a fair settlement is preferable to a good law suit. On the other hand, the judicial process is always available in the event the fair settlement is not reached. When the judicial process is involved, all parties are bound by the orders and judgments of the court having jurisdiction until such orders or judgments are reversed or modified by an appellate court. Although the kennel owners may feel justified in their complaints, their course of action in depriving the State and the counties of needed revenue certainly warrants the actions of the trial court. Their business is profitable only by virtue of a State statutory permission to operate dog

tracks guided by regulatory measures adopted by the State. It might be said they are "biting the hand that feeds them".

In summary, we hold that all of the orders entered by the trial court were proper under the circumstances and without error. The writ of habeas corpus is discharged and the petitioners therein are remanded to the custody of respondent, such incarceration to begin on Tuesday, July 22, 1975, at 5:00 p.m.

The orders of the trial court reviewed by interlocutory appeal are affirmed.

All litigation has been carefully considered, and, in view of the public interest involved, the time for filing a petition for rehearing is limited to Wednesday, July 23, 1975, at 5:00 p.m. However, this decision and order shall be effective forthwith and the granting of this privilege of rehearing shall not operate as a stay of any proceedings in this cause.

It is so ordered.

ROBERTS, OVERTON and ENGLAND, JJ., concur.

BOYD, J., concurs in part and dissents in part with opinion.

Boyd J., concurring in part and dissenting in part

I concur in that portion of the majority opinion holding that courts should not permit defiance of lawful orders and that the urgent public economic interests involved here

require speedy and conclusive action. It is obvious that the racing contract for the Flagler Track has been broken, and I agree that those responsible should be held liable. Determination of liability should be made at an early date, and in the meantime this Court should authorize the Flagler Track to operate with other dogs, if the parties should be unable to reach an agreement suggested by counsel for the owners during argument at this Court, whereby the dogs would run with sufficient proceeds being placed in the registry of the Court until final determination of the rights of the parties thereto shall be made.

I respectfully dissent to that portion of the majority opinion which authorizes specific performance of the racing contracts by the owners, as I feel this constitutes involuntary servitude in conflict with the Thirteenth Amendment to the Constitution of the United States. In expressing this view I recognize that in some instances courts may require specific performance, but the unique nature of the services involved by the owners, handlers and trainers in the instant case is such as to place them under the protection of the Thirteenth Amendment.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 47,674

JACK WILSON, et al.,
JACK SANDSTROM, Director, Department of Corrections and Rehabilitations, Dade County, et al.,

Respondents,

AND

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD., a Florida limited partnership,

Appellee.

PETITION FOR REHEARING

Pursuant to the closing paragraph of this Court's Order of July 21, 1975, and to Rule 3.14 and other applicable Florida Appellate Rules, Petitioners, Jack Wilson, Pat Dalton, C. R. Holzschuher, Lester Cole, Charles M. Leavy, F. B. Stutz, Wayne Strong, James L. Frey, George Alder, Dick Jordan, Richard F. Andrews, J. E. O'Donnell, B. W. Bashaway, Paul Haenel, Earl Hall,

Stephan Merlock, Frances Fulginiti and Paul Discolo, and Appellants, Florida Greyhound Owners & Breeders Association, et al., respectfully move this Honorable Court to enter an Order rehearing, reconsidering and granting new oral argument concerning its Orders of July 17, 1975, and July 21, 1975, and as grounds therefor would show unto this Honorable Court as follows:

Unfortunately, because of the Court's felt need to render a prompt decision, it has accepted whole pieces of briefs filed by Flagler and the Attorney General and incorporated large portions of those briefs in its opinion. Indeed, one large portion of the opinion accepts almost verbatim the "Supplemental Brief on the Merits" filed, contrary to all appellate rules known to petitioners, after oral argument in this cause. As will be shown below, that brief has caused this Court to have a total misapprehension of the nature of the services required to be rendered by petitioners in this matter.

A cursory examination of the authorities cited shows that this Court's understandable reliance upon those legal representations is not only misplaced, but this Court's elevation of those briefs to the permanently recorded law of Florida has committed this Court's prestige and reputation to clearly erroneous statements of the law.

1. *Error Concerning Removal.*

One of these absolutely incorrect, unarguably erroneous statements involves the question of jurisdiction of state courts following removal and before remand. It is critical to this Court's decision. And it is wrong.

It was plainly necessary for respondents to have the Court accept this position, for as Mr. Sibley admitted to the Court on oral argument, *the July 3 order* (the necessary prerequisite for all subsequent orders *was based upon the testimony and evidence taken after removal and prior to remand.*

This Court's opinion, adopting Flagler's brief, cites *Metro. Cas. Ins. Co. v. Stevens*, 312 U.S. 563 (1941), for the proposition that post-removal state court proceedings "are valid if the case was not in fact removable." This Court's opinion acknowledges that *Stevens* was dealing with an earlier version but says "the jurisdictional proscription was similar." This statement is irrefutably incorrect. An amended "version" of the statute was passed expressly to *overrule* such statutes as that in *Stevens.* Title 28 United States Code §1446(e) *explicitly* provides that after removal "the state court shall proceed no further unless and until the case is remanded."

One of the two pre-eminent commentators on Federal jurisdiction discusses §1446(e) as follows:

> "The language of this section makes it clear, *contrary to the prior law*, that even though it ultimately be determined by the federal court that an action was not removable, *the state court may not act after the petition for removal has been filed*, prior to remand and its orders in that interim are void.
>
> "Any further proceedings in the state court are coram non judice and will be vacated."
>
> [1 *Barron & Holtzoff, Fed. Pract. & Proc.* 527 (Wright Ed. 1974), emphasis supplied]

To the same effect, see, *e.g.*, *State v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971); *Master Equip. Inc. v. Home Ins. Co.*, 342 F.Supp. 549 (E.D. Pa. 1972); *Fire Assn. v. Gen. Handerchief Corp.*, 107 N.E.2d 499 (N.Y. 1952); *Hopson v. No. Amer. Ins. Co.*, 233 P.2d 799 (Ida. 1951); *State v. Price*, 190 S.E.2d 403 (N.C. 1972); *Hornung v. Master Tank & Welding Co.*, 151 F.Supp. 169 (D.N.D. 1957).

The other and most-widely accepted authority in the field writes:

> "And the state court is deprived of jurisdiction to proceed with the . . . action unless and until the case is remanded, irrespective of whether the action is removable, which is a question for the federal court. * * * . . . §1446(e) operates as a statutory stay upon further state court proceedings in the removed action. Any further proceeding in the state court in the removed action, unless and until the case is remanded, would be a nullity, unless the defendant appeared in the state action and contested the right of the state court to proceed."
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> [1A *Moore's Fed. Pract.* 511 (1974)]

Against these authorities and the vast authorities in accord, *e.g.*, *Mitchum v. Foster*, 407 U.S. 225, 234 n12 (1972); *Ga. v. Rachel*, 384 U.S. 780, 797 n27 (1966); *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir. 1957), *cert. den.* 355 U.S. 842 (1957); *Allman v. Hanley*, 302 F.2d 559 (5th Cir. 1962); *Penna. v. Bradshaw*, 361 F.Supp. 405 (W.D.Pa. 1973); *De Moss v. Kelly Services, Inc.*, 355 F.Supp. 1111 (D.P.R. 1972); *Caldwell v. Montgomery Ward*

& Co., 207 F.Supp. 161 (S.D.Tex. 1962); *Saslow v. State Farm Mut.*, 224 F.Supp 965 (D.Alas. 1953), Respondents have succeeded in their effort to have this Court adopt dicta from one district court (concerning the *repealed* statute) and a *C.J.S. citation based upon the repealed statute.*

Although correct, this Court's conclusion that after remand "the trial court had jurisdiction" plainly misses the point. That point is that the trial court's 6:10 p.m. *order was based upon* "evidence" received at a "hearing" which the trial court had no power to hold. Any such evidence is analogous to the "poisoned tree" and the July 3 order is its "fruit." The July 3 order was and is therefore void. It was based upon void proceedings held *ex parte* and without notice to petitioners.

Thus, the July 3, July 4, July 5 orders and July 7 and 8 orders are *all* fruit of the poisoned tree. A court cannot hold anyone in contempt of a void order. See, *e.g.*, *State ex rel Everette v. Petteway*, 179 So. 666 (Fla. 1938).

2. *Error Concerning Overbroad Rulings Which May Be Res Judicata.*

In its decision rendered only three weeks after this suit was filed—based upon proceedings occurring prior to petitioners' even being able to file their answers, affirmative defenses and counterclaims, and based upon the trial court's determined (and apparently successful) *refusal to accept any evidence* proffered by petitioners—this Court's decision *decides the entire case.*

For unless this Court recants its expansive holdings, it has decided a case before defendants were permitted to plead and despite the fact defendants were allowed to adduce no proof. Despite the fact that not one of these orders has yet been appealed, briefed or argued, this Court has apparently stamped its approval upon: (a) denial of hearing on a bond (July 8 Tr. p. 37); (b) refusal to hear the individual's personal finances with reference to their "keys to the jail" (Tr. 38); (c) refusal to hear evidence concerning the enforceability of the contracts (Tr. 39); (d) denial of jury trial for criminal contempt (Tr. 37); (e) refusal to hear any evidence on the defenses (Tr. *passim*); (f) denial of the motion to dismiss the complaint; (g) denial of the motion to dissolve. Moreover, this Court has evidently ruled upon the issues of independent contractor vs. employee status [a jury question, *cf.*, *e.g.*, *Cantor v. Cochran*, 184 So.2d 173 (Fla. 1966) and *Magarian v. So. Fruit Dist.* 1 So.2d 858 (Fla. 1941) (both holding that the question of independent contractor v. employee status depends upon all the circumstances; clearly a question of fact); *Watkins v. Sims*, 88 So. 764, 765 (Fla. 1921) (holding such questions to be for the jury)], though petitions have never even briefed the matter.

This fear is not unfounded. This Court has held that habeas corpus proceedings resulting in final adjudications of issues may have *res judicata* effect. *See Crane v. Hayes*, 253 So.2d 435, 440 at ¶[5] (Fla. 1971).

Although these petitioners have never been accorded the right to adduce *any* evidence in support of their position, nor even to have the time mandated by Florida's Rules of Civil Procedure to answer, this Court has ruled

expressly or impliedly against petitioners on nearly every defense or position they could take.

Surely this Court did not intend that these defendants, because of the "public interest" or whatever rationale, are deprived of all rights to plead, take discovery, demand jury, adduce proof or, in general, present defenses. Yet the expansive nature of the rulings (also, *e.g.*, on all the contract issues raised in briefs which were researched and asembled within the space of three weeks) and the *res judicata* rationale of *Crane v. Hayes* appear to foreclose all defenses.

This Court has ignored, but perhaps foreclosed, the issue whether Flagler could split its cause of action and file, as it did, a Federal Court complaint for Federal anti-trust violations based on the same facts and arising out of the same occurrences and transactions as that sued upon in the case below. This Court has ignored but perhaps foreclosed the petitioners' own anti-trust defenses and counterclaims.

Contrary to Mr. Sibley's oral assertion to this Court that due process means only "the right to be present," due process means more than the opportunity to be "present." Since prior to Florida's becoming a state, the United States Constitution has mandated due process. The courts have repeatedly found it absent where a procedure has violated Daniel Webster's negative definition of it in *Dartmouth College v. Woodward*, 4 Wheat 518, 4 L.Ed. 629 (1816):

> "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."

See also *Powell v. Alabama*, 287 U.S. 45, 68 (1932), holding that due process means that:

> "... no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. 'Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered.' "

And see this Court's decision in, *e.g.*, *State ex rel Paoli v. Baldwin*, 31 So.2d 627, 630 (Fla. 1947) (reversing the State Racing Commission's revocation of a trainer's license):

> "A hearing without the right to interpose reasonable and legitimate defenses cannot constitute due process of law."

3. *Error Concerning Appellate Rule 5.1.*

Flagler and the State led this Court into error in the assertion that 1920 Florida Statutes §§2293, 3170 are "incorporated into" F.A.R. 5.1 via §59.13. That early statute was mandatory: "*No appeal ... shall* operate as a supersedeas *unless* the judge order[s] a stay" is plainly not "incorporated" into F.A.R. 5.1. "... the lower court

may . . . grant a supersedeas. . . ." The old rule has been repealed. Florida therefore reverted to common law, and the appeal of the mandatory injunction automatically stayed the trial court's contempt power. *Powell v. Land & Impr. Co.*, 26 So. 700 (Fla. 1899).

4. *Error Concerning Compulsion of "Unique Services."*

Flagler urged and this Court has accepted as one of the bases of its opinion, an erroneous passage in 17 Fla. Jur. *Injunctions* §37 at 397-8. That section states as follows:

"Contracts of Service.

Many of the cases in which equity has been asked to enjoin a breach of contract arise from disputes concerning contracts for personal services. Underlying the exercise of the injunctive power in such cases is the difficulty of replacing such service, and the inadequacy of damages as compensation for such loss. Injunctive relief, therefore, is often invoked to prevent violation of contracts calling for personal services or acts of a special character, or for such services by persons of eminence in their calling, possessing special qualifications. It follows clearly that reasons for equitable intervention are wholly lacking in cases of ordinary employment, where no personal contract or peculiar influence of the employee over the customers of his employer exists, and where the services are without special merit and are such as can be readily supplied or obtained from others with-

> out much difficulty or expense. In such cases injunctive relief will be denied."

The anonymous writer of that section cited American Jurisprudence (1st) as his only authority. When, however, the compilers of Am.Jur. revised their encyclopedia in 1969 (42 Am.Jur.2d), they realized that there was *no authority* for that assertion and omitted it from Am.Jur. 2d. Florida Jurisprudence has merely failed, in its pocket part supplement, to note the error in citation. This Court, therefore, has lent its credibility to a scrivener's error! Contrast this with 5A Corbin *Contracts* §1204 (1964): "It is almost universally held that a contract for personal services will not be specifically enforced, either by an affirmative decree or by an injunction." And compare it even to the corrected version of the Am.Jur. citation:

> "Equity will not, by decreeing specific performance or by issuing a mandatory injunction, compel one person against his will to employ or serve another although he has contracted to do so. Speaking generally, it may be said that it is the right of an employer to discharge his employee and of the employee to quit his employer's service subject to no other penalty than a judgment for damages for breach of the contract. Neither will a court of equity, indirectly or negatively, by means of an injunction restraining the violation of the contract, compel the affirmative performance from day to day or the affirmative acceptance of merely personal services. It has been said that this refusal is based in part upon the difficulty or impossibility of enforcement and of passing judgment upon the quality of perform-

> ance, and in part upon the undesirability of compelling the continuance of personal association after disputes have arisen and confidence and loyalty are gone. In some cases it has been observed that an award of that character against an employee would seem like the enforcement of involuntry servitude, and to award it against an employer would constitute an attempt by the courts to run the business of the country, which would be dangerous."

There is no authority for the Florida Jurisprudence section cited favorably by this Court. The overwhelming body of case law holds precisely to the contrary.

5. *Error Concerning Denial of Jury Trial.*

Since the contempt proceeding below did not involve a compensatory fine payable to plaintiffs, and since it imposed jail terms primarily to vindicate the court's dignity and authority rather than compensate plaintiffs, it was a criminal contempt proceeding. Petitioners could therefore be held in contempt only after jury trial. See *Demetree v. State ex rel Marsh*, 89 So.2d 498, 501 (Fla. 1956); *Schoenthal v. Schoenthal*, 138 So.2d 802, 803-4 (3d Fla. DCA 1962); *South Dade Farms v. Peters*, 88 So.2d 891, 897-903 (Fla. 1956); *Wallens v. Buchanan*, 168 So.2d 687 (3d Fla. DCA 1964); and *Dade CTA v. Rubin*, 217 So.2d 293, 296 (Fla. 1969).

6. *Error Concerning Nature of Contracts.*

By relying solely on Flagler's argument rather than any facts presented at an adversary hearing and by en-

grafting Flagler's supplemental brief as part of its opinion (virtually all of page 7 of the opinion), this Court has been deceived into believing that petitioners had no personal services to be rendered. Although it is true that kennel owners cannot go onto the track itself at race time, it is *absolutely untrue* that these are the only duties required. If the trial court—or this Court—were to accord petitioners their fundamental constitutional right to offer evidence and testimony on this issue, the veracity of Mr. Sibley's supplemental fact statement could be checked. But apart from that, it should suffice to recall that *the trial court was convinced the contracts called for personal services*, and said so:

> "The Court: They are, in my opinion, personal services on the face of these contracts. . . ."

Neither the trial court, nor this Court, has allowed the kennel owners to submit evidence to depict the full term of the contract. See the transcript as follows, at pages 180-190:

> "Q. [of Mr. Konnick] Tell us about what is involved in training dogs.
>
> "MR. WARD: Your Honor, I will object to the materiality of this. I do not see the relevancy to the proceeding we have before Your Honor today of what it takes to be a dog trainer.
>
> "THE COURT: I do not know what that has to do with today's hearing.

"MR. PETTIGREW: It has to do with the responsibility of the persons being sued in this case. I want to demonstrate the personal service nature of these contracts.

"THE COURT: That has nothing to do—

"MR. PETTIGREW: Therefore, the propriety of the remedy of specific performance and injunctive relief on a mandatory basis—

"THE COURT: Denied.

"MR. PETTIGREW: Your Honor, I would like to proffer in the record—

"THE COURT: It is proffered. You do not need to do it by testimony. You may proffer whatever you wish.

"MR. PETTIGREW: I would expect to elicit from Mr. Konick and other witnesses that the Flagler Kennel Club booking application and contract requires personal services by the kennel owner, or his appointed agent, requiring them to maintain and condition two greyhound dogs trained and available for hurdle racing, to condition all greyhounds for schooling, to present the greyhounds for racing and be present in person at the racing meet, to supervise and conduct all the obligations of the contract involving schooling, conditioning, and maintaining of dogs, that these personal services are unique, that a dog will only fully respond to the specific handling by its

trainer, handlers and others fully acquainted with its unique characteristics; that training and conditioning are continuing processes; and that a racing kennel, in fact, as is to be required by the contract, is really required to provide a group of personal services through the owners in the training, conditioning, and in the continuous maintenance of the dogs for racing; and that clearly, under Florida case law, under the facts, they would amount to personal services contracts.

"That ends the proffer.

"THE COURT: All right.

"MR. WARD: For the record, we object to the proffer, Your Honor.

"THE COURT: The proffer is already in. It is in the record. The proffer will be denied.

"MR. PETTIGREW: Your Honor, I would like to call Mr. Perrine Palmer.

(Witness excused.)

* * *

"Q. (By Mr. Pettigrew) Mr. Palmer, pursuant to this Court's order on July 3rd, did you have occasion to try to take over and maintain the dogs attached to the exhibit and others at the Florida Kennel compound?

"A. Yes. I have a report here that I am ready to submit whenever the Court wants to receive it.

"Q. Did you determine that the greyhounds placed under your legal charge were animals that could best be supervised and taken care of by their own owners and trainers?
"A. Yes.

"Q. Did you, in fact, determine that without the experienced handling by the owners or trainers or other teams providing maintenance services for them that harm could come to the dogs?
"A. Yes.

"Q. Did you not join with me in requesting the Court to return full responsibility for possession, care and conservation of the dogs to the trainers and owners?
"A. Yes.

"THE COURT: Mr. Pettigrew, I will advise you that they have had that responsibility prior to that order.

"MR. PETTIGREW: Your Honor, that is correct, prior to the July 3rd—you mean—

"THE COURT: On July 4th they had the order specifically stating that they were to maintain and take care of their dogs, which I understand was not completely complied with.

"MR. PETTIGREW: All right, sir. I am not familiar with the July 4th order. [Entered *ex parte.*] I want to determine from a factual stand-

point from Mr. Palmer whether the maintenance of these dogs, their care and their handling, requires familiarity with the dogs.

"Q. (By Mr. Pettigrew) Was that your conclusion from your experience recently with these dogs?
"A. Yes, and in the best interests of the dogs that is what it required.

"Q. Do you think from your experience that anyone else can suddenly come in without prior training and run the dogs?
"A. No.

"Q. Why not, Mr. Palmer?
"A. I think conditioning greyhounds and racing greyhounds is a special qualification.

This Court itself has defined "personal services" as something which not only includes actual acts but also *supervision over time.* See *Calumet Co. v. Oil City Corp.*, 154 So. 141, 142 (Fla. 1934), refusing specific performance of a personal service contract which was such a contract because:

"the nature and character of the . . . [work] is left almost entirely to the good faith, judgment, discretion and skill of the one undertaking to . . . [do it], so that the performance of the contract requires some personal supervision that will extend over a considerable period of time . . . ."

Contrary to Mr. Sibley's focusing upon the rules, see paragraph 7 of the contract, which requires the presence of the owner at the track. And note paragraph 11, which *ipso facto* terminates the contract if the kennel owner dies. Is that not "personal"?

Calumet holds that such contracts will not be mandated "because of the inability of the court to undertake supervision of performance of such a contract." [at 142] Yet this Court has affirmed a trial court assertion of such a right and has *forced unwilling parties to "compete"* at dog racing, where the State has held out to the public that fair and competitive racing will occur and about which the public can wager. In fact, this Court has compelled a *charade* of racing, for it has forced unwilling parties to give the appearance of competition despite their contention and conviction that they have *nothing to win.* (The repetition by Flagler of its litany: "the largest purse in the world," ignores the evidence—available if any court deigns to hear it—that Flagler racing is also the *most costly* in the world. Gross purses are *not* net purses.) Is this in the "public interest"?

The contract ¶5 compels each kennel owner's prior "express consent" to run "more than one of his greyhounds in any stake . . . races made up by the Racing Secretary." The Regulations prohibit racing more than two and require express permission each time from the kennel owner. Is not this contract, prepared by Flagler and in case of ambiguities construed most strongly against it, violative of the Regulations and creative of the same kind of charade as the compulsion of unwilling competition? (This contract has no severability clause; one illegal

provision vitiates the entire contract. Has the Court ruled upon this so as to have a *res judicata* effect?)

It is apparent that this Court based its findings that the contracts are not personal service contracts on the contention that the only requirements affecting the delivery of the dogs are those rules promulgated by the State and not the rules of Flagler. Such a finding, which was argued for the first time by Flagler in its supplemental brief filed after oral argument, is supported nowhere in the record. It is clearly refuted by the proffer set forth above, and by the plain language of the contract itself. The contract provides, among other things, that the kennel owner "shall fully comply" with "all the rules and regulations of the *Track Operator*." How is this "plain and unambiguous on its face"? Nowhere in the contract are those rules identified and attempts to offer evidence on this issue below were denied with the explanation that "we will get to that later."

There is no evidence to support the conclusion of this court that:

> ". . . under the rules regulating greyhound racing, the owner, trainer, or helper of the agent of the owner has absolutely nothing to do with the greyhound except to present it to Flagler at least one hour before the first race."

Such a conclusion is, on its face, absurd. If the owners were not required to perform personal services, why did Flagler need a mandatory injunction in the first instance? The lower court had given Flagler custody of the dogs. If all that were necessary is to produce the chattel, that had been accomplished.

This Court concluded that the order of the court below did not violate the 13th Amendment by finding that the injunction required no personal services. There was no hearing allowed below on the factual basis of such a finding. Petitioners attempted to offer evidence of the personal services nature of the contract; evidence which the trial court refused to accept. *At best*, a factual dispute exists as to the exact nature of the services. Can this Court sanction a proceeding *where no evidence is allowed which offends the pre-conceived impressions of the trier of fact?*

Can this Court avoid constitutional review of involuntary servitude by giving it a different label and, then denying those charged the opportunity to refute it before an impartial trier of fact?

Such a process is at best a fundamental violation of due process of law, guaranteed by the Constitutions of the United States and the State of Florida.

7. *Error Concerning Certain Evidentiary "Findings."*

This Court, by reciting them in its opinion, apparently found important and was motivated in its decision by certain factual findings. Most are absolutely speculative —no evidence was adduced below to support or refute them. For example, there is not a shred of evidence that "the State is losing the confidence of the public in its ability to properly regulate the gambling activities in pari-mutuel wagering." (p. 6) That statement is paraphrased from the State's brief. It is purely gratuitous.

Yet it may now be *res judicata*. Another: "the damage to Flagler in the minds of the public . . . cannot possibly be measured." Again accepted by the Court from a brief. Again absolutely without evidentiary support. Another: "The kennel owners supply a unique product, not readily obtainable on the market . . . . " Contrary to this assertion, the evidence is that there are 156 other kennels licensed in Florida and Flagler's chief executive admitted he had not even *tried* to obtain other greyhounds. Another: "There is no allegation of or contention relating to fraud or duress in the execution of the contract." This is totally untrue. The July 3 mandatory injunction was issued only four days after filing of the complaint. Few of the defendants had even been served. None, obviously, had answered. In fact, the answer for most of these defendants, a true copy of which is annexed hereto, was not filed until after all argument and briefs were submitted regarding the writ of habeas corpus. Therefore, the answer is not contained in the appellate record. That answer alleges fraud, duress, conspiracy and other defenses which go to the validity of the contract. Petitioners attempted to offer evidence of these defenses to the trial court but were repeatedly rebuffed. The trial court unequivocally stated that it was not going to entertain any attacks as to the validity of the contract as that was for a later time. Another: the State is suffering $64,000 a day loss. Yet there will be (or would have been if a hearing had been held anywhere) evidence adduced showing that two South Florida race tracks have in fact enjoyed enormous increases in wagering with resultant increase in State funds. And there would have been evidence showing that making up the loss is a matter totally within the discretion of the State.

8. *Error Concerning the "Public Interest" Factor; Mandatory Injunctions.*

This Court has accepted the hysterical claims by Flagler and the State that "the sky is falling" and has predicated its entire opinion upon it. Assuming without comment that the gravity and public importance of the State's allowing those members of the public who suffer from the compulsion to lose money by gambling is—really—on the same level of public interest as, *e.g.*, the operation of schools and transportation facilities, and ignoring the fact that the Secretary of Florida's Department of Administration has publicly called the Flagler closing of *de minimus* importance to Florida's budget, this Court has nevertheless been led to grievous error.

However important it may be to have trains (and dogs) run on time, in this nation the rule of law and the limitations of the Constitution nevertheless must prevail.

Yet this Court, in the press of time, has altered the law heretofore established in its more deliberate decisions.

There is no authority for the proposition that the public interest can vitiate constitutional rights. There was no "state of emergency." Nor can loss of race track revenue be equated to an emergency. The State can make as much money as it wishes from gambling. If the Legislature wished, it could have authorized such operations all over Florida. It, or the Department of Business Regulation, could allow those which exist to open longer, making up any alleged lost tax revenues or, for that matter, making millions more. It is perhaps an inconvenience, but an emergency it is not. Moreover, by specifically iden-

tifying the exact dollar figure of its alleged loss, the State has shown an adequate remedy at law and the impropriety of injunctive relief.

The "taxpayers" have no greater right than any litigant. No life or limb was in danger. To use the guise of public interest to sustain injustice is indeed a dangerous precedent.

It also should be pointed out here that the Court's reliance on Flagler's legal scholarship has again led it astray. Contrary to this Court's statement in its opinion, no county of this State will lose nor have they lost any race track funds as a result of the down time at West Flagler. Those funds were "capped" by the 1971 legislature and the addition of monies by West Flagler to the pool will have no impact whatsoever on any county in this State.

Yet now, because of gambling receipts, this Court has—for the first time in Florida history—eliminated the requirement that mandatory injunctions must be based upon plaintiff's demonstration of his rights beyond a reasonable doubt. It has further eliminated the procedural safeguard that a mandatory injunction can only be entered after final hearing.

A mandatory injunction is in the nature of a final judgment. *FEC Ry. Co. v. Taylor*, 47 So. 345 (Fla. 1908). It unalterably disturbs the status quo. That is why in no previous case have the courts of this State authorized such temporary relief without a full opportunity for hearing and without a showing that the plaintiff would prevail beyond a reasonable doubt. *FEC Ry. v. Taylor*,

supra. In each of the cases cited by West Flagler and by this Court, defendants were afforded a full opportunity to be heard and at that hearing it was shown beyond a reasonable doubt that the plaintiff was entitled to ultimate relief. In *Kellerman v. Chase*, 135 So. 127 (Fla. 1931), cited with approval by this Court, the trial court awarded a mandatory injunction only after a full and adequate hearing was held at which hearing it was shown that the plaintiff was entitled to recover beyond a reasonable doubt. At that hearing it was determined by the trial court that the defendant had no defenses and was insolvent. The defendant admitted the allegations in the bill and stated merely that he did not wish to perform.

There is no analogy of that case to these facts. There was no full and adequate hearing in this case. Flagler did not rebut petitioners' defenses beyond a reasonable doubt. Those defenses were not even allowed to be offered. Nor is delivering boxes of tomatoes analogous to the training, care and supervision of racing greyhounds.

None of the cases cited by Flagler or the State stand for the proposition that *mandatory* injunctions may be granted on sworn affidavits or in a preliminary hearing without notice. Even the cases cited by West Flagler and this Court state unequivocally that, unlike a prohibitory injunction or restraining order, which can be issued without notice, a mandatory injunction can only be issued after a full hearing when it is shown that the plaintiff will prevail beyond a reasonable doubt. *S.R.D. v. Fugoli*, 123 So. 473 (1st Fla. DCA 1960) [the court merely reversed an order of dismissal], *Zetrouer v. Zetrouer*, 103 So. 625 (Fla. 1925) [citing with approval FEC Ry. v. Taylor, supra]. See Dobbs, *Remedies* (1973) at 105-106.

Using the standard expressed by this Court for almost 100 years, the procedure by which the mandatory injunction was issued constitutes a fundamental violation of due process.

As to whether Flagler's right was "clear," every plaintiffs lawyer in Florida would like to present his complaint by affidavit and without the interference of opposing counsel's cross-examination and the nuisance of hearing a defense. By that standard—and that is what this Court has adopted—all plaintiffs cases are "clear."

9. *Error Concerning Involuntary Servitude.*

Perhaps most critical in the casualties caused by this Court's adherence to Flagler's and the State's arguments, is petitioners' right to have due process with reference to their rights to be free from servitude.

The trial court said—we'll get to that "later." This Court says since the rules do not permit the owners on the track at race time and since dogs are not persons, there is no personal service. And, then, this Court, citing the aforementioned Florida Jurisprudence Section, states that even if they were personal services, that is all right. Both courts have reached this result without hearing any evidence from the kennel owners themselves. Apparently, this Court and the trial court have some preconception that kennel owners—like some horse owners—are gentlemen, absentee owner types, who get reports and look for ways to reduce their tax liability. If someone, somewhere, were to take any evidence on what a typical, Flagler kennel owner is and does, that impression would be destroyed. Many of the kennel owners, with their wives and children, spend every day of the year caring for,

training, handling, feeding, and practically living with their greyhounds. Without doing so, they cannot supply dogs to a track. To say that they have *merely* to "present their dogs one hour before race-time" and absent themselves, is *less* than a one-eyed view of the duties and responsibilities. If evidence were adduced, there could be the establishment of a *reverse* "beyond a reasonable doubt" standard and petitioners could still prove that their services are "personal."

But even if it were otherwise and the *contracts* did not (as they most certainly do) call for personal services, petitioners' 13th Amendment rights are still violated. For the July 3 preliminary mandatory injunction does compel involuntary servitude. It says to each of petitioners—"*you* do these things or *you* go to jail."

Such a ruling directly collides with every man's right to decline to work for any other. The last time a Florida court attempted to impose such a requirement, the United State Supreme Court reversed. See *Pollack v. Williams*, 88 L.Ed. 1095 (1944). There, this Court upheld a conviction for "fraud" for failing to live up to a contract of service. Justice Jackson, speaking for the Court, enunciated the supremacy of the Constitution over "public interest":

> "Whatever of social value there may be, and of course it is great, in enforcing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service."
>
> [at 1104]

This Court has never since then (until now) departed from this standard. See, *e.g., Pinellas CTA v. BPI,* 214 So.2d 34 (Fla. 1968), where even the unquestionable public interest in operating schools was not permitted to deprive teachers from quitting. This Court's attempt to distinguish *Pinellas CTA* as not involving independent contractors misses the point. Even independent contractors are free from involuntary servitude. To state otherwise, and under these circumstances, is to create a new category of peonage in this State.

CONCLUSION

In its opinion, this Court has relied heavily on the citation of fact and authority offered by Flagler and the Attorney General. In instance after instance, citations of fact and authority are erroneous. In the short period of time allowed for filing this petition, some of those grievous errors have been noted.

Because of an alleged public need, never shown to exist, this Court has given its seal of approval to an egregious abuse of due process. Four days after a complaint is filed, at an *ex parte* hearing, an order is entered awarding in effect, final judgment to one of the litigants. Five days later, the parties suffering from that *ex parte* order are jailed for not complying with it. They are afforded no opportunity to offer testimony against it. Nine days later, this Court has entered what amounts to a final judgment resolving many issues which were not even raised. The case is over. And yet, the time has not expired for most of these defendants to answer the complaint.

Some may be satisfied that the order of this Court must be "good" because it accomplished the desired result. Given a choice between involuntary servitude and jail, the kennel owners this time chose involuntary servitude. But prompt "results"—at the cost of long-lasting damage to fundamental principles of due process—are never worth the price. And this supposedly laudatory result has been attained by resort to naked power rather than law. Justifying this result required ignoring the record, ignoring the law and reaching for authority to such poorly regarded treatises as Florida Jurisprudence (citing Am.Jur. 1st). To reach its result has required a step back to the days which many thought were long behind; rubber hose confessions were once justified on the basis that crime was a public problem.

There is no justification for what occurred in this case. It is a miscarriage of justice without recent precedent.

Recognizing this Court's policy respecting rehearing, and recognizing that this Court's opinion reflected the decision of a majority, petitioners nonetheless respectfully and earnestly pray that this Court will carefully reexamine the record, its decision, and the authorities upon which it is based and quash the opinion of this Court rendered July 21, 1975.

Finally, since this petition for rehearing is written before receipt of the full opinion of this Court (a telephoto without the dissent of Justice Boyd was received late Monday), and respectfully request leave to file supplemental briefs in support of this petition within seven

days. Petitioners also respectfully direct this Court's attention to their reply brief filed in the Court of Appeal.

Respectfully submitted,

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EUGENE E. STEARNS

WE HEREBY CERTIFY that a true copy of the foregoing was mailed to Patton, Kanner, Nadeau, et al., 150 S.E. Second Avenue, Miami, Florida; Sibley, Giblin, Levenson & Ward, 1301 Dade Boulevard, Miami Beach, Florida; Honorable Robert Shevin, Attorney General, The Capitol, Tallahassee, Florida; and Honorable Stuart Simon, County Attorney, Dade County Courthouse, Miami, Florida, this 23rd day of July, 1975.

Guy B. Bailey, Jr.
GUY B. BAILEY, JR.
Of Counsel

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1975
TUESDAY, JULY 29, 1975

CASE NO. 47,674

JACK WILSON, et al.,

Petitioners,

v.

JACK SANDSTROM, Director, Department of Corrections and Rehabilitation, Dade County, Florida, et al.,

Respondents,

and

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, et al.,

Appellants,

v.

WEST FLAGLER ASSOCIATES, LTD., a Florida limited partnership,

Appellee.

ORDER

Petition for Rehearing is denied. Our opinion is not res judicata to the main proceeding of this cause and is without prejudice for the petitioners and appellants to raise in the main proceeding the issues presented herein,

including claims for damages for an improperly issued temporary injuction and the enforcement thereof.

ADKINS, C. J., ROBERTS, BOYD,
OVERTON and ENGLAND, JJ., concur

A True Copy

ATTEST:

Sid J. White

SID J. WHITE
Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1975
TUESDAY, JULY 29, 1975

CASE NO. 47,674

JACK WILSON, ET AL,

Petitioners,

vs.

JACK SANDSTROM,
Director, Department of Corrections and Rehabilitation,
Dade County, Florida, et al,

Respondents.

And

CASE NO. 47,737

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, et al,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
a Florida limited partnership,

Appellee.

The above-styled causes are hereby consolidated sua sponte.

A True Copy

TEST:

Sid J. White

SID J. WHITE
Clerk Supreme Court

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1975

CASE NO. 47,674

JACK WILSON, PAT DALTON, C. R. HOLZSCHUHER, LESTER COLE, CHARLES M. LEAVY, F. B. STUTZ, WAYNE STRONG, JAMES L. FREY, GEORGE ALDER, DICK JORDAN, RICHARD F. ANDREWS, J. E. O'DONNELL, B. W. BASHAWAY, PAUL HAENEL, EARL HALL, STEPHAN MERLOCK, FRANCES FULGINITI and PAUL DISCOLO,

Petitioners,

v.

JACK SANDSTROM, Director, Department of Corrections and Rehabilitation, Dade County, Florida, et al.,

Respondents.

Opinion filed July 17, 1975

Case of Original Jurisdiction—Habeas Corpus

Richard A. Pettigrew and Guy B. Bailey, Jr. of Pettigrew and Bailey, for Petitioners

Marion Sibley of Sibley, Levenson and Ward, for Respondents

PER CURIAM

Petitioners (hereinafter referred to as dog owners) seek relief by habeas corpus from their incarceration for violation of an injunction order of the circuit court. The petition alleges that the incarceration is a violation of their constitutional rights of due process of law and equal protection of the law. It is also alleged that the order of contempt and the mandatory injunction upon which the contempt is predicated violates the dog owners' rights to avoid involuntary servitude. The respondent has filed his response and return to the writ of habeas corpus.

This litigation arose when West Flagler Associates, Ltd. (hereinafter referred to as Flagler) sought to enforce contracts between Flagler and the dog owners, wherein the dog owners agreed to supply dogs for racing at Flagler's track. On July 3, 1975, the circuit court entered an order granting a temporary mandatory injunction requiring the dog owners to supply the dogs. On July 7, 1975, the dog owners entered an interlocutory appeal from this order to the District Court of Appeal, Third District.

On July 8, 1975, a contempt order was entered wherein the dog owners were confined to the county jail for violation of the mandatory injunction with the right to purge themselves by returning their dogs for racing at the Flagler track. The habeas corpus proceedings now under consideration seek relief from the order of July 8, 1975, adjudging the dog owners in contempt and jailing them. We have jurisdiction in the habeas corpus proceeding. FLA. CONST., art. V, § 3 F.S.A.; F.A.R. 4.5, F.S.A.; FLA. STAT. Ch. 79, F.S.A.

The litigation has now become fragmented. The interlocutory appeal pending in the Third District Court of

Appeal (*Florida Greyhound Owners & Breeders Association, Inc., etc., et al. v. West Flagler Associates, Ltd., etc.*, Case No. 75-1068) seeks review of the order of July 3, 1975 granting the temporary injunction and the amendment to this order dated on July 4, 1975. The habeas corpus proceedings *sub judice* arose from the contempt for failure to provide by the terms of the injunction issued by the order of July 3, 1975.

In *Mize v. County of Seminole*, 229 So.2d 841 (Fla. 1969), we had for consideration the review of a bond validation proceedings for construction of a court house in Seminole County. In other proceedings the District Court of Appeal had rendered a decision requiring the circuit court to enjoin the issuance of the bonds because the City of Sanford was not the county seat. There was no question concerning our jurisdiction in the bond validation proceeding. In taking jurisdiction of the District Court's injunction proceeding, we said:

> "This Court, being vested with exclusive jurisdiction in all proceedings for the validation of bonds and certificates of indebtedness, would be completely frustrated in the necessary and proper exercise of that jurisdiction in the validation proceedings unless it could bring before it for review the decision of the District Court which enjoined the issuance of said bonds. Ultimate disposition of this case, therefore, is not only necessary and proper but essential to the complete exercise of our jurisdiction. We therefore accept jurisdiction . . . ." (p. 843)

Where we have jurisdiction of only a portion of fragmented litigation and the public interest requires an expeditious determination of the issues involved in all of the litigation, this Court should exercise its prerogative under FLA. CONST., art. V, § 3(b)(4), F.S.A., and issue "all writs necessary to the complete exercise of its jurisdiction."

It appears from the record that approximately $64,000 a day is being lost by the State of Florida by virtue of the closing of the track. This sum represents an estimate of the State's receipts from pari-mutuel betting. Because of the interest of the State of Florida and the public in the operation of the track, *we feel it incumbent upon us to expedite the final disposition of all proceedings in the State courts relating to this contractual controversy.*

There is no question concerning the jurisdiction of this Court in the habeas corpus proceeding. *That proceeding also involves constitutional questions which are identical to the constitutional issues pending before the District Court of Appeal.* It is therefore necessary and proper to the exercise of our jurisdiction that we issue a writ to consolidate proceedings in the same forum. Ultimate disposition of the validity of the order of July 3, 1975 is not only necessary and proper but essential to the complete exercise of our jurisdiction.

By virtue of the provision of the Constitution (FLA. CONST., art. V, § 3(b)(4), F.S.A.) authorizing this Court to issue *"all writs necessary to the complete exercise of its jurisdiction," on the basis of Mize,* and *on our own motion, we hereby direct the District Court of Appeal to transfer the case* of *Florida Greyhound Owners & Breeders Association, Inc., etc., et al. v. West Flagler Associates, Ltd., etc.,* Case No. 75-1068, *to this Court.*

Nothing in this decision should be construed to suggest that future litigants can *bifurcate* their appeal in order to accelerate appellate review or bypass the district courts. This case is unique in that petitioners invoked our original jurisdiction *from jail on substantial constitutional issues which were also pending in the District Court*, and *that there is a significant public interest in the prompt disposition of the entire controversy*. Due regard for the orderly processes of judicial administration would suggest that litigants in this procedural situation would normally seek habeas corpus in the same court which had jurisdiction over the interlocutory appeal.

We dispense with any further oral arguments and will consider these cases on the records and the briefs.

It is so ordered.

ADKINS, C.J., ROBERTS, BOYD, OVERTON and ENGLAND, JJ., Concur

IN THE SUPREME COURT OF FLORIDA
JULY TERM, AD. 1975
THURSDAY, JULY 10, 1975

JACK WILSON, ET AL.,

Petitioners,

vs.

JACK SANDSTROM, Director,
Department of Corrections and Rehabilitation,
Dade County, Florida,

Respondent.

WRIT OF HABEAS CORPUS

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO: HONORABLE JACK SANDSTROM, DIRECTOR, DEPARTMENT OF CORRECTIONS AND REHABILITATION, GREETINGS:

Petitioners have filed in this Court Petition for Writ of Habeas Corpus charging that they are illegally detained and imprisoned by you. You are hereby commanded to make return to this writ on or before July 16, 1975 showing the lawful cause and authority for the detention and imprisonment of the petitioners, and thereafter comply with the order of this Court in the matter; petitioners' reply brief due July 21, 1975, and it is further ordered that this case is set down for hearing on Monday, July 21, 1975 at 9:30 o'clock a.m.

WITNESS the Honorable James C. Adkins, Chief Justice of the Supreme Court of Florida, and the Seal of said Court at Tallahassee, the Capital, on this the 10th day of July, 1975.

Sid J. White

Clerk of the
Supreme Court of Florida.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1975
THURSDAY, JULY 10, 1975

JACK WILSON, ET AL.,

Petitioners,

vs.

JACK SANDSTROM, Director,
Department of Corrections and Rehabilitation,
Dade County, Florida,

Respondent.

Upon consideration of Petitioners' Motion to Release Petitioners on Recognizance or Alternatively Motion for Bond, said motion is granted and it is ordered that petitioners be released upon their own recognizance pending disposition of the cause in this Court.

A True Copy

ATTEST:

Sid J. White
Clerk Supreme Court.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
TUESDAY, JULY 8, 1975

CASE NO. 75-1068

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC.,
a Florida corporation, et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD.,
a Florida limited partnership,

Appellee.

Counsel for appellants having filed in this cause emergency motion to quash and/or stay preliminary mandatory injunctions requiring, *ex parte* and without evidentiary or legal support specific performance of personal service contracts, the emergency being grounded upon the orally announced jailing of defendants for non-adherence to involuntary servitude, and the court having considered same, it is ordered that said motion is denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of Appeal,
Third District

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1975
WEDNESDAY, JULY 9, 1975

CASE NO. 75-1068

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., et al.,

Appellants,

vs.

WEST FLAGLER ASSOCIATES, LTD., a Limited Partnership organized and existing under the laws of the State of Florida,

Appellee.

WEDNESDAY, JULY 9, 1975

This matter having come on for hearing before the court after notice, on appellants' emergency motion to stay proceedings pending appeal, and the court having considered same, after hearing oral argument of counsel thereon, it is ordered that said motion is hereby denied.

It is further ordered that this appeal shall be advanced in accordance with the agreement of counsel for early disposition and their agreement to submit the appeal upon briefs already filed. The State of Florida is allowed to

file a brief on or before July 14, 1975 and appellants are granted to July 16, 1975 to respond to the state's brief. No further oral argument will be allowed.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of Appeal,
Third District

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20932

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized and existing
under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
etc., et al.,

Defendants.

TEMPORARY INJUNCTION WITHOUT NOTICE

This cause came on to be heard upon the sworn complaint of the plaintiff which seeks in part a temporary injunction, without notice, enjoining and restraining, until further order of this Court, the defendant greyhound owners and kennel operators from removing from the jurisdiction of this Court any racing greyhounds owned, leased or controlled by the defendant kennel owners and operators, shown on a list thereof in Exhibit F to the complaint, and third parties having custody thereof from delivering or surrendering to the owners or lessees or any agents or representatives of the owners or lessees of any of the dogs in their possession listed in Exhibit F to the complaint, and the Court from the sworn complaint and evidence presented finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the injury and damage apprehended as hereinafter set forth and as alleged in the complaint will occur unless an injunction be granted without notice.

2. The contracts required to be performed by the defendants, namely, the supplying of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattel and product which cannot be readily supplanted or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law.

3. The plaintiff's application for temporary injunction and apprehension that the defendant kennel owners will remove the racing greyhounds from the jurisdiction of this Court if they were to be given notice of any application for such an injunction or other relief is well founded and irreparable damage and harm would result if the racing greyhounds were to be removed from the jurisdiction and such injunctive relief is necessary and essential to insure complete relief to the plaintiff.

Accordingly, the defendant greyhound owners and kennel operators enumerated in the complaint are hereby enjoined until further order of the Court from removing from the jurisdiction of this Court any of the dogs owned, leased or controlled by them and enumerated and listed in Exhibit F to the complaint. If any of the dogs listed are not within the custody and control of the defendant greyhound owners, their kennels or officers and agents of said defendants but rather in the possession and custody of third parties, then such third parties having custody and control of such greyhounds and actual notice of this order

are enjoined until further order of this Court from delivering and surrendering possession of any of the named dogs to any of the defendants or to any officers, agents or representatives of the defendants or any of them. Likewise the said defendants are enjoined from receiving delivery thereof.

4. This injunctive order shall become effective immediately, provided, however, that the plaintiff is ordered and directed to file with the Clerk of this Court, on or before July 1, 1975, a bond to be approved by the Clerk of this Court with the plaintiff as principal and a surety company qualified to do business in the State of Florida, as surety, payable to the defendants in the penal sum of $5,000 and conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain or may have been put to by reason of the issuance of this temporary mandatory injunction if this temporary injunction is dissolved or the cause dismissed.

5. That service upon Sylvan Holtzman, Attorney at Law, of a copy of this injunctive order and a copy of the complaint shall constitute good and sufficient service of this injunctive order upon all of the defendant dog owners and shall constitute notice to them of the issuance of this injunctive order. Service upon any persons not named as parties defendant herein and who have care, custody or control of any of the dogs enumerated in Exhibit F shall be effected by delivery to them of a copy of this injunctive order.

DONE AND ORDERED at Miami, Dade County, Florida, this 30th day of June, 1975.

s/ Harvie S. Duval

Circuit Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.:

WEST FLAGLER ASSOCIATES, LTD.
a Limited Partnership, organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ARTHUR M. BOBRICK, BILL FOREST, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated association, ROBERT E. THOMAS, member, officer, and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LaCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MARLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON, and FRANCIS FULGINITI,

Defendants.

NOTICE OF FILING PETITION FOR REMOVAL

NOTICE is hereby given that on the 3rd day of July, 1975, the above-named Defendants who have been served, filed a Petition for Removal and Bond for Removal in the above-entitled action originally filed in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, to which Petition was attached a copy of all process, pleadings and orders which had been served and filed in this cause. A copy of this Petition for Removal, Memorandum in Support of Petition for Removal, and Bond for Removal are attached hereto.

NOTICE is also given that a copy of the Petition for Removal was filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida, this 3rd day of July, 1975, for filing in the action removed.

DATE: July 3, 1975.

Respectfully submitted,

PETTIGREW AND BAILEY
Attorneys for Defendants

By: Bruce W. Greer

BRUCE W. GREER

I HEREBY CERTIFY that a true copy of the foregoing was hand delivered to Mr. Marion Sibley, and to Mr. Herbert Nadeau, at their respective addresses, this 3rd day of July, 1975, together with the Petition for Removal, Memorandum in Support of Petition for Removal, and Bond of Removal.

Bruce W. Greer

Of Counsel

UNITED STATES DISTRICT COURT
MIAMI DIVISION
SOUTHERN DISTRICT OF FLORIDA
CASE NO.:

WEST FLAGLER ASSOCATES, LTD.,
a Limited Partnership organized and existing under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, ARTHUR M. BOBRICK, BILL FOREST, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated officer and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LeCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MERLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON, and FRANCIS FULGINITI,

Defendants.

PETITION FOR REMOVAL

All Defendants who have been served in this action file this Petition for Removal from the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Florida, to the United States District Court for the Southern District of Florida, and respectfully represent to this Court:

1. Petitioners are Defendants who have been served in the above-captioned cause. Upon information and belief, Defendant, National Greyhound Association has not been served with process and, therefore, is not included in this Petition.

2. This civil action was brought, and is now pending as Case No. 75-20902, in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. A factually indistinguishable, independent civil action was brought, and is now pending as Case No. 75-1213, in United States District Court, Southern District of Florida. That case is before the Honorable Peter T. Fay.

3. If the civil action brought in State Court were well pleaded, the United States District Court would have original jurisdiction pursuant to Title 28, U.S.C. § 1337, Title 15, U.S.C. §§1, et.seq., and other United States statutes. The Plaintiffs have inadvertently, mistakenly, or fraudulently concealed that the nature of the action filed in State Court is identical to that filed in Federal Court under the above Antitrust statutes, in that each raises a basic federal question regarding the alleged conspiracy and concerted action of the Defendants to impair interstate commerce by the restraint of trade against the Plain-

tiff dog track. These facts more fully appear in the deposition of David I. Hecht, which is filed with this Petition.

4. Removal of this action is predicated upon Title 28, U.S.C. § 1441, in that this action involves a federal question, and the amount in controversy exceeds the sum of $10,000.00, exclusive of interest and costs.

5. Pursuant to Title 28, U.S.C. § 1446(d), this Petition is accompanied by a joint and several bond in the sum of $500.00.

6. Written notice of the filing of this Petition for Removal and Removal Bond has been given to all parties herein, and a copy of this Petition has been filed today with the Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida.

7. Petitioners also file the following documents which constitute all of the process, pleadings, orders, and other documents filed and served in this action:

(a) Complaint

(b) Temporary Injunction Without Notice

(c) Order Re Hearing

(d) Civil Action Summons

(e) Order Requiring Plaintiff to Produce David I. Hecht

(f) Deposition of David I. Hecht

(g) Motion to Intervene

(h) Affidavit

(i) Notice of Hearing

WHEREFORE, Petitioners pray that this Court take jurisdiction of this action.

Respectfully submitted,

PETTIGREW AND BAILEY
Attorneys for Defendants

By: Bruce W. Greer
BRUCE W. GREER

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

Before me, the undersigned authority, this 3rd day of July, 1975, personally appeared BRUCE W. GREER, Attorney for Petitioners, who upon being duly cautioned and sworn, deposes and states that he has personal knowledge of the facts set forth in the attached Petition for Removal and that they are true.

SWORN TO AND SUBSCRIBED before me, this 3rd day of July, 1975.

Geraldine Curtis

Notary Public, State of Florida
At Large
My commission expires Feb. 20, 1976. Bonded thru Maynard Bonding Agency.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Removal was hand-delivered to Mr. Marion E. Sibley, SIBLEY, GIBLIN, LEVENSON & WARD, 1301 Dadeland Boulevard, Miami Beach, Florida, and to Mr. Herbert L. Nadeau, PATTON, KANNER, NADEAU, SEGAL, ZELLER & LaPORTE, 150 S.E. 2nd Avenue, Miami, Florida, Attorneys for Plaintiff, this 3rd day of July, 1975.

Bruce W. Greer

Of Counsel

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902 — DuVal

WEST FLAGLER ASSOCIATES, LTD., etc.,
Plaintiff,

v.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, etc., et al.,
Defendants.

Miami, Florida
Thursday, July 3, 1975

The above-entitled matter came on for trial before the Hon. Harvie S. DuVal, Judge of the above-styled court, at the Dade County Courthouse, Miami, Florida, on Thursday, July 3, 1975, at 3 p.m., pursuant to notice.

* * *

APPEARANCES

JAMES D. WHISENAND, ESQ.,
Assistant Attorney General,
On behalf of the State of Florida.

WILLIAM D. MOORE, ESQ.,
On behalf of the Division of
Pari-Mutuel Wagering,
Florida Department of Business Regulation.

ROBERT CUEVAS, ESQ.,
Assistant Dade County Attorney,
On behalf of the Intervenors.

STUART W. PATTON, ESQ., and
HERBERT L. NADEAU, ESQ., of
the firm of Patton, Kanner, Nadeau,
Segal, Zeller and LaPorte,
Co-counsel on behalf of
West Flagler Associates, Ltd.

MARION E. SIBLEY, ESQ., of the
firm of Sibley, Giblin, Levenson & Ward,
on behalf of the Appellee.

RICHARD A. PETTIGREW, ESQ., and
GUY B. BAILEY, ESQ.,
BRUCE GREER, ESQ., and
SYLVAN HOLTZMAN, ESQ., of the
firm of Pettigrew & Bailey,
on behalf of the Appellants.

INDEX

Witness	Direct	Cross
Daniel McPherson	11	22
Jack Anthony Huggins	23	—
David Hecht	41	—
George Simon	70	—
Perrine Palmer	74	—

EXHIBITS

Intervenor's	Page
Composite Ex. No. 1	14
Ex. No. 2	21

Plaintiff's	Page
Composite Ex. No. 1	57
Composite Ex. No. 2	62
Composite Ex. No. 3	73

* * *

MR. PETTIGREW: Your Honor—

THE COURT: Yes, sir.

MR. PETTIGREW: On behalf of the defendants in this matter, we would like to respectfully announce that the defendants have exercised their privilege of removing this case to the Federal Court, Southern District of Florida, and we respectfully regret we cannot participate further in this matter or any hearing, under the law of the United States Code.

MR. SIBLEY: I understand he is announcing his appearance for the defendants in this case, your Honor, for the record, and we would like to proceed, if your Honor will hear us.

We don't think this case can honestly be removed, so we would like to put on our case.

THE COURT: You may proceed.

MR. PETTIGREW: Your Honor, we respectfully request the opportunity to leave at this time.

THE COURT: Good-by.

MR. PETTIGREW: Thank you, sir.

MR. SIBLEY: Has your Honor read the complaint in this cause?

THE COURT: Yes, I have.

* * *

THE COURT: All right. The Court will enter a temporary mandatory injunction ordering the kennel owners that have been served to commence operation within 24 hours or a receiver will be appointed over the 18 kennels that are in the compound to operate with those dogs until further order of the Court.

The other kennel owners, if they do not choose to operate, rule to show cause may be brought no later than Monday to determine whether they are in contempt of this Court or not.

MR. WHISENAND: Your Honor, the State of Florida does have an order here prepared for granting its motion to intervene.

Do I submit this to the Court for the Court's signature?

THE COURT: Bring it here and I will sign it (indicating).

MR. CUEVAS: I have one, also, on behalf of the County.

THE COURT: Bring it here.

Can you prepare those orders, Mr. Sibley?

MR. SIBLEY: I have prepared an order, Your Honor, but I don't know whether it fits the ruling of the Court exactly or not.

I would like the privilege of having what the Court has ordered typed up and presented to the Court within a short period of time.

THE COURT: All right.

MR. PATTON: May I add to that these comments, Your Honor?

THE COURT: Go right ahead.

MR. PATTON: Your 24-hour matter does call for certain preparatory matters. For example, in order to run 24 hours from now, it is necessary that the kennel owners file by 10 o'clock tomorrow morning their entries.

If you would consider that as being part of your order, then they would commence their operations within the 24 hours, or Saturday.

In other words, there are two things that have to be done: First, they must enter the dogs by 10 o'clock tomorrow morning, and then in order to run Saturday, which would be the 24-hour period — if you would consider that in the order, we will submit it to you as being part of it.

In addition, we, in our prayer, have asked for a short day to be fixed, and it might be well for Your Honor to fix a short day for them to answer and then to fix a return date for our final hearing.

THE COURT: We'll include the 10 o'clock provision that you have in the injunction, but they have to have schooling, don't they?

MR. SIBLEY: They have had sufficient schooling.

You see, a majority of the dogs are coming right from Biscayne. They are running currently. It is only those series of dogs who have not been schooled, but who are required to be schooled, who they elicited for us.

They can proceed without any problem next Saturday, which is the day after tomorrow, provided they file their entries tomorrow at 10 o'clock.

We'll prepare an order along that line to fit the situation.

THE COURT: By appointment of a receiver, if they do not comply, do you want a hearing on appointing a receiver?

MR. SIBLEY: No. I would rather have Your Honor make it automatic in the event they fail to comply, that the Court will appoint a receiver.

THE COURT: Well, if they fail to comply by failing to enter their list of dogs by 10 o'clock in the morning, then the receivers will be appointed forthwith for the continued operation.

MR. SIBLEY: Yes, sir.

THE COURT: Do you have anyone to suggest?

MR. SIBLEY: Well, I put a witness on the stand, Mr. Palmer. He probably — he is the president of that compound out there. He is probably as good as any man in organizing that I know of —

THE COURT: Are there any objections or any suggestions by the State or the County?

MR. WHISENAND: We concur in that recommendation, Your Honor.

THE COURT: By the failure of the dog owners to comply with the order by 10 o'clock in the morning, Mr. Palmer will be appointed by the Court as the receiver of the dogs in the compound to operate as the receiver should be operated.

MR. PATTON: I thought there ought to be one other item that you perhaps want us — want to require us to furnish a bond of some kind, which is usual and normal.

May I suggest $25,000?

THE COURT: I think $25,000 would be sufficient.

We might also enjoin them from removing the dogs prior to —

MR. PATTON: Yes, Your Honor.

MR. SIBLEY: Enjoin them from moving them out of the compound?

THE COURT: That is correct.

(Thereupon the hearing was concluded.)

* * *

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

STATE OF FLORIDA :
: SS.
COUNTY OF DADE :

I, STANLEY SEPLIN, do hereby certify that the case of West Flagler Associates, Ltd., etc., plaintiff, versus Florida Greyhound Owners & Breeders Association, Inc., etc., pending in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, No. 75-20902, was heard before the Hon. Harvie S. DuVal, as Judge, on July 3, 1975; that I was authorized to and did report in shorthand the proceedings and evidence in said hearing; and that the foregoing pages, . . . constitute a true and correct transcription of my shorthand report of an excerpt of the proceedings of said case.

IN WITNESS WHEREOF I have hereunto affixed my hand this 3rd day of July, 1975.

S. Seplin

Certified Shorthand Reporter
Notary Public State of Florida At Large. My commission expires Dec. 25, 1977. Bonded thru General Insurance Underwriters.

* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO.: 75-1286 CIV-PF
(Filed July 3, 1975)

WEST FLAGLER ASSOCIATES, LTD.,
a Limited Partnership, organized and existing
under the laws of the State of Florida,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC., a Florida corporation, its officers and directors, MARC HILL, GLENN R. CAMPBELL, JR., CHARLES B. MEDLEN, ARTHUR M. BOBRICK, BILL FOREST, ROBERT F. NIEMEYER, F. B. STUTZ, O. K. DUKE, JR., G. A. ALDERSON, E. L. MOSES, GEORGE J. FULTON, A. L. HAUCK, JAMES L. FREY, H. N. SIMMONS, ROBERT E. MENDHEIM, JAMES T. McKEEHAN, NATIONAL GREYHOUND ASSOCIATION, an unincorporated association, ROBERT E. THOMAS, member, officer and director of NATIONAL GREYHOUND ASSOCIATION, RICHARD F. ANDREWS, B. W. BASHAWAY, EARL BAXTER, WOODROW BLACKWELL, CARROLL BLAIR, LESTER COLE, CHESTER CULBREATH, PAT DALTON, PAUL J. DISCOLO, J. W. EWALT, PAUL HAENEL, EARL HALL, C. R. HOLZSCHUHER, BRADFORD COCHRANE, DICK JORDAN, GEORGE ADLER, JOE LeCROIX, CHARLES M. LEAVY, F. B. STUTZ, D. O. MEANS, AL MOSKOVITS, STEVEN MARLOCK, J. E. O'DONNELL, DUANE RANDLE, RAY RANDLE, WAYNE STRONG, JOSEPH VILLELLA, JAMES E. FREY, JACK WILSON, and FRANCIS FULGINITI,

Defendants.

ORDER OF REMAND

THIS CAUSE is before the Court upon the Court's own motion.

The Court having considered the record, it is

ORDERED AND ADJUDGED that the above styled case is hereby remanded to State Court, it appearing from the face of the petition that there is no jurisdiction under Title 28, U.S.C., Section 1441.

DONE AND ORDERED at Miami, Florida this 3rd July, 1975 at 5:55 P.M.

C. Clyde Atkins

UNITED STATES
DISTRICT JUDGE
[For Judge Peter T. Fay]

IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized and existing
under the laws of the State of Florida,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC., etc., et al.,
Defendants.

ORDER GRANTING TEMPORARY MANDATORY INJUNCTION

This cause came on to be heard upon the sworn complaint of the plaintiff for a temporary mandatory injunction after notice to the defendants, and upon consideration of the sworn complaint and the evidence presented to the Court, the Court finds and decrees as follows:

1. That the Court has jurisdiction of the subject matter and of the parties and that the equities are with the plaintiff and against the defendants.

2. That the individual dog owners named in the sworn complaint have written contracts to furnish dogs for the greyhound racing meet scheduled to commence on July 3, 1975, at Flagler Kennel Club and under the terms

and provisions of said contracts the defendants are obligated to supply the dogs pursuant to the contracts and not to take any action which would interfere with the conduct of the meet. The State of Florida has a financial interest in the taxes to be derived from the conduct of the scheduled race meet, and is suffering a loss of tax revenue of $64,000.00 per day and for each and every day that the said defendants fail to comply with their contracts. In addition, plaintiff is suffering irreparable damage by reason of its inability to operate its racing program because of the greyhound owners' refusal to perform their contracts, and the economy of this area is materially affected as in excess of 600 employees of the kennel club are suffering a loss of employment.

3. The obligations required to be performed by the defendants, namely, the supplying of greyhound dogs for the plaintiff's scheduled race meet, involve special and unique chattels or product which cannot be readily supplanted or replaced, and to deny to the plaintiff the relief sought would result in irreparable damage for which the plaintiff has no adequate remedy at law. The balance of convenience and the public interest and the irretrievable loss of income from taxation to the State of Florida all distate [sic] that the relief sought should be granted.

4. Plaintiff's application for a temporay mandatory injunction is hereby granted and the individual defendants, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Lester Cole, Chester Culbreath, Pat Dalton, Paul J. Discolo, J. W. Ewalt, Paul Haenel, Earl Hall, C. R. Holzschuher, Bradford Cochrane, Dick Jordan, George Alder, Joe LaCroix, Charles M. Leavy, F. B. Stutz, C. O. Means, Al Moskovits, Steven

Merlock, J. E. O'Donnell, Duane Randle, Ray Randle, Wayne Strong, Joseph Villella, James L. Fry, Jack Wilson and Francis Fulginiti, having contracts with the plaintiff to supply dogs for the meet scheduled to commence on July 3, 1975, are hereby ordered and directed to forthwith comply with said contracts and to furnish dogs to the plaintiff for the conduct of the aforesaid race meet in accordance with the contracts with the plaintiff and with statutes, rules and regulations of the State of Florida governing greyhound racing and pari-mutuel betting.

5. The defendant dog owners named in this order are directed to file with the Racing Secretary of Flagler Kennel Club their entries for the scheduled races on Saturday matinee, July 5, 1975, not later than 10:00 o'clock A.M. on July 4, 1975.

6. In the event that the defendants or any of them do not file their entries for the Saturday matinee for July 5, 1975, by 10:00 o'clock A.M. on July 4, 1975, or if, having filed their entries, they fail and refuse to supply their dogs for the Saturday matinee of July 5, 1975, or any date allocated for racing subsequent to July 5, 1975, then the dogs located and kenneled at the compound of the Florida Kennels, Inc. shall be sequestered and PERRINE PALMER shall take possession and control of said dogs and all trucks and equipment utilized in performing said contracts and shall enter and race said dogs in accordance with this order for the account of the respective defendant owners, and the costs and fees incident to such services shall be assessed againt the disobedient partie.

7. It further appearing to the Court that irreparable damage and loss will result not only to the plaintiff but to

the State of Florida and the people of Dade County, and such exigencies require and dictate an early disposition of this matter, to that end the defendants are ordered and directed to file their answers to the complaint by July 11, 1975.

8. The defendants, and each of them, are hereby temporarily enjoined and restrained until the further order of this Court from removing any greyhounds now kenneled at the Florida Kennels, Inc. from said location, and the Florida Kennels, Inc. is hereby notified that it shall not permit the removal of any of said greyhounds from said compound.

9. Plaintiff, as principal, and a surety company, authorized to do business in the State of Florida, as surety, shall file with the Clerk of this Court as soon as the Clerk's office is open for business on Monday, July 7, 1975, a bond to be approved by the Clerk of this Court in the sum of $25,000.00, conditioned to pay to the defendants all damages, losses, expenses and charges which the defendants may sustain by reason of the issuance of this temporary mandatory injunction if this injunction is dissolved or the complaint dismissed.

DONE AND ORDERED at Miami, Dade County, Florida, this 3 day of July, 1975 at 6:10 P.M.

HARVIE S. DUVAL

Circuit Judge

STATE OF FLORIDA)
COUNTY OF DADE)

This Copy is a true copy of the Original on file in this Office. Witness my hand and Official Seal, This 3 day of July A.D., 1975.

RICHARD P. BRINKER
Clerk Circuit Court

By: R. Swerdloff, D.C.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA.

CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida; the STATE OF FLORIDA; and DADE COUNTY, FLORIDA,

Plaintiffs,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC., etc., et al.,

Defendant.

**AMENDMENT TO ORDER
APPOINTING RECEIVER**

It having been made to appear to the Court that the order and judgment of this Court rendered on July 3, 1975, has not been complied with by the Defendants to whom it was directed, and, therefore, Perrine Palmer has assumed his duties as Receiver of this Court, it is, thereupon,

CONSIDERED, ORDERED and ADJUDGED that Perrine Palmer, as such Receiver, is under the duty to forthwith take possession of the dogs in the eighteen (18) kennels belonging to the Defendants which are located in the Florida Kennels Incorporated compound, and he is empowered to make entry by whatever means may be necessary to each of said kennels in order to inventory the dogs and the equipment which he is required to take into his custody. In the event the employees of such kennel owners decline or refuse to care for said greyhounds, to

feed and to attend to their needs, then the said Receiver is empowered and directed to employ such employees as he may obtain to properly care for and feed the said animals, and he is empowered to do all things necessary and required to accomplish and comply with the directions herein contained, and he is authorized and empowered to take such action as may be necessary or required to protect the said animals from harm or injury by the Defendants or their employees. The said Receiver is authorized to borrow such money as may be necessary in order to accomplish the performance of his duties, and the funds so borrowed are hereby made a first lien upon the greyhounds for whose benefit such indebtedness was incurred.

The trainers and dog handlers employed by the Defendants to feed and administer to the needs of the greyhounds which are located at Florida Kennels, Inc., are hereby ordered to continue to feed and care for said animals and that if not paid for their services by the owners, Defendants herein, they will be paid by the Receiver for their services and all such fees paid shall constitute a lien on the greyhounds in the custody of the Receiver. That the failure of any trainer or dog handler to feed and care for said animals after being requested to do so by the Receiver or his employees, agents or servants, will place themselves in the position of being in contempt of this Court, and to be dealt with in accordance with law. That all trainers and dog handlers employed by the Defendants herein are hereby enjoined from interfering in any manner whatsoever with the Receiver or his agents, servants or employees, and are hereby ordered to cooperate with the Receiver in order to see that the greyhounds in question are properly cared for.

That any illness or injury to any dog caused by the refusal of the Defendants or their trainer, handlers or other employees to comply with this Order shall be the sole responsibility of said Defendant owners herein.

That any and all veterinarians who have been treating or will be treating any dog or dogs owned by the Defendants located on the property of Florida Kennels, Inc., are hereby ordered to continue the said care of said dog or dogs and in the event their bill for services is not paid by the owners, it shall be paid by the Receiver and shall constitute a lien on said greyhound for whose benefit said indebtedness was incurred.

That all Sheriffs, Police Chiefs and other law enforcement officers are hereby ordered to cooperate with the Receiver and to take whatever action is necessary to prevent violence and to allow the Receiver and his agents, servants or employees to carry out his duties.

The said Receiver is directed to appear before this Court at 12:00 noon on Monday, July 7, 1975, to report his acts and doings in the premises and to report to this Court any actions engaged in by the Defendants or their employees seeking to obstruct the preformance by the Receiver of his duties as herein set forth.

DONE and ORDERED at Miami, Dade County, Florida, this 4th day of July, 1975.

A True Copy

Harvie S. DuVal

CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD.,
a limited partnership organized and existing
under the laws of the State of Florida,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS, &
BREEDERS ASSOCIATION, INC., etc., et al.,
Defendants.

FURTHER AMENDMENT TO ORDER APPOINTING RECEIVER

Upon application of the Defendants who have been served herein who own kennels and after hearing, upon notice to the parties, and the Court being fully advised in the premises, it is

ORDERED that this Court's Order styled "Amendment to Order Appointing Receiver" dated July 4, 1975, be and the same hereby is amended as set forth below, that the Receiver is directed to appear before this Court on Monday, July 7, 1975, at 12 noon, to report on his performance in accordance with the orders of the Court as set forth in prior orders and pursuant to this Order, and it is

FURTHER ORDERED that the Order dated July 3, 1975, Paragraphs 6 and 8, is hereby amended to permit the return *instanter* to the Defendants the possession and control of the dogs kenneled at Florida Kennels, Inc., and upon the Defendants taking possession and control of said dogs, the Receiver shall have no further obligation for their care, protection and conservation, but shall monitor ingress and egress of the dogs attached and identified in the Complaint herein and shall not permit their removal without the permission of the Receiver or his duly authorized representative and the Receiver is relieved of the responsibility to race said dogs pending further Order of this Court.

DONE AND ORDERED in Dade County, Florida, on July 5, 1975, at 5:17 P.M.

A True Copy

Harvie S. DuVal

HARVIE S. DuVAL
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., a limited partnership organized and existing under the laws of the State of Florida; the STATE OF FLORIDA; and DADE COUNTY FLORIDA,

Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS & BREEDERS ASSOCIATION, INC. etc., et al.,

Defendants.

CONTEMPT NOTICE

TO: SYLVAN HOLTZMAN, ESQ.
8585 Sunset Drive
South Miami, Florida 33156

PETTIGREW & BAILEY
Suite 1820, One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131

Attorneys for Defendants

YOU ARE NOTIFIED that Plaintiffs will apply to the Honorable Harvie S. DuVal, Circuit Judge, on Monday, July 7, 1975, at 12:00 noon in the Dade County Courthouse at Miami, Florida, for an order adjudging the Defendants, Richard F. Andrews, B. W. Bashaway, Earl Baxter, Woodrow Blackwell, Carroll Blair, Lester Cole, Chester Culbreath, Pat Dalton, Paul J. Discolo, J. W. Ewalt, Paul Haenel, Earl Hall, C. R. Holzschuher, Brad-

ford Cochrane, Dick Jordan, George Alder, Joe LaCroix, Charles M. Leavy, F. B. Stutz, C. O. Means, Al Moskovits, Steven Merlock, J. E. O'Donnell, Duane Randle, Ray Randle, Wayne Strong, Joseph Villella, James L. Frey, Jack Wilson and Francis Fulginiti, in contempt of Court for violation of the terms of the order or judgment entered and rendered by this Court on July 3, 1975, for failing to comply with the mandatory order of said Court which required said Defendants and each of them to file with the Racing Secretary of Flagler Kennel Club their entries for the scheduled races on Saturday matinee, July 5, 1975, not later than 10:00 o'clock A.M. on July 4, 1975, and for failing to comply with the mandatory order or judgment of this Court to supply dogs for the racing meet scheduled to commence on July 3, 1975, at the Flagler Kennel Club.

I certify that a copy hereof has been furnished to the above-named addressees by personal delivery on this 5th day of July, 1975.

SIBLEY, GIBLIN, LEVENSON
& WARD
P.O. Box 390360
Miami Beach, Florida 33139
and
PATTON, KANNER, NADEAU,
SEGAL, ZELLER & LaPORTE
150 S.E. 2nd Avenue
Miami, Florida
Attorneys for Plaintiff
West Flagler Associates, Ltd.

By: Stuart W. Patton

STUART W. PATTON
(Of Counsel)

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

NO. 75-20902

WEST FLAGLER ASSOCIATES, LTD., etc.,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, etc., et al.,
Defendants.

CONTEMPT ORDER

This cause coming on to be heard upon the Contempt Notice filed by the plaintiff on July 5, 1975, and served upon the attorneys for the defendants on said date, and the defendants, Jack Wilson, Pat Dalton, C. R. Holzschuher, Lester Cole, Charles M. Leavy, F. B. Stutz, Wayne Strong, Woodrow Blackwell, James L. Frey, George Alder, Dick Jordan, Richard F. Andrews, Chester Culbreath, J. E. O'Donnell, B. W. Bashaway, Paul Haenel, Earl Hall, Al Moskovits, Stephen Merlock, Frances Fulginiti, C. O. Means, Paul Discolo and J. W. Ewalt, were personally before this Court represented by their attorneys, Sylvan Holtzman and Richard Pettigrew.

This Court entered its order dated July 3, 1975, ordering and directing the defendants and each of them to forthwith comply with their individual contracts to furnish dogs to plaintiff for the conduct of its racing meet. The

Court considered testimony and the evidence on the issue of whether the defendants had complied with the order of this Court of July 3, 1975. The Court finds and decrees as follows:

1. That all of the defendants named in the first paragraph admitted in open court that they had not complied with the order of this Court and that they had not furnished dogs to the plaintiff for the racing meet in accordance with the contracts between each of the defendants and plaintiff. The Court heard evidence from the defendants concerning their reasons for not obeying the Court's order and any mitigating circumstances which may affect the sentence of the Court.

2. That the defendants named in the first paragraph each wilfully failed and refused to obey the order of this Court of July 3, 1975. The reasons advanced by each of the defendants for not obeying this Court's order are deemed insufficient.

3. That each of the defendants named in the first paragraph above is hereby adjudged to be in contempt of this Court for his wilful failure to obey the Court's order of July 3, 1975, and for failure to comply with his contract with the plaintiff and each is hereby fined Seventy-Five Hundred Dollars ($7,500.00) for the wilful contempt of the Court's order of July 3, 1975.

4. That upon failure to pay the above said fine by 12:00 Noon on July 8, 1975, each of the said defendants, with the exception of C. O. Means, J. W. Ewalt, Woodrow Blackwell, Chester Culbreath and Al Moskovits,

is remanded to the custody of the Sheriff of Dade County, Florida, to be confined in the Dade County jail until the above assessed fine has been paid.

5. That each of said defendants named in the first paragraph is hereby directed to pay a fine of Twenty-Five Hundred Dollars ($2,500.00) per day for each and every racing day hereafter in which he fails to obey the order of this Court of July 3, 1975, and to return his dogs to Flagler Kennel Club for racing as heretofore ordered.

6. That each defendant confined to the county jail by this order may purge himself and may be immediately released from confinement upon the payment of the above said fine, plus any additional fines ordered hereafter to be paid.

7. That the defendants, C. O. Means, Woodrow Blackwell, Chester Culbreath, J. W. Ewalt and Al Moskovits, for reasons of health, are not remanded to the custody of the Sheriff but are directed forthwith to pay said fines, and failing to do so, said defendants are enjoined and restrained from racing any greyhounds owned by them in the State of Florida.

8. Any defendant may purge himself of this contempt by immediately agreeing to comply with his contract to return his dogs for racing at Flagler Kennel Club prior to confinement. Agreement to comply with the defendant's contract after the commencement of confinement will not purge said defendant of contempt.

9. The said fine of Seventy-Five Hundred Dollars ($7,500.00) shall be payable to the Clerk of the Circuit Court of Dade County, Florida.

10. The daily fine of Twenty-Five Hundred Dollars ($2,500.00) as assessed against each of the aforesaid defendants shall be payable for each and every racing day hereafter for which said defendant fails to comply with the order of this Court and the said fines shall be paid to the office of the Clerk of the Circuit Court of Dade County, Florida, at 10:00 A.M. on each and every succeeding racing day that said defendant shall fail to comply with the order of this Court. [Deleted by court]

11. Should any defendant herein fail to pay before 10:00 A.M. on each succeeding racing day, the fine of Twenty-Five Hundred Dollars ($2,500.00) hereby imposed on each and every racing day hereafter that they may be

in default of the order of this Court, a writ of attachment may issue forthwith to produce any such defendant before the Court. [Deleted by court]

12. The Court will be in session at 12:00 Noon on each and every day hereafter (except Saturday and Sunday) until further order of this Court, for the purpose of hearing any notice of contempt for failure of said defendants to comply with this order of July 3, 1975.

DONE AND ORDERED at Miami, Dade County, Florida, this 8th day of July, 1975.

Harvie S. DuVal

Circuit Judge

STATE OF FLORIDA)
COUNTY OF DADE)

This Copy is a true Copy of the Original on file in this Office. WITNESS my hand and Official Seal. This 8 day of July A.D., 1975.

RICHARD P. BRINKER
Clerk Circuit Court

By: L. Bernard

D.C.

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

No. 75-20902 Judge DuVal

WEST FLAGLER ASSOCIATES, LTD., etc.,
Plaintiff,

vs.

FLORIDA GREYHOUND OWNERS &
BREEDERS ASSOCIATION, INC.,
a Florida corporation, etc., et al
Defendants.

ORDER REAFFIRMING TEMPORARY MANDATORY INJUNCTION OF JULY 3, 1975, AND DENYING VARIOUS MOTIONS OF THE DEFENDANTS

On July 3, 1975, this Court sat for the purpose of hearing the application for mandatory injunction of the plaintiffs. At the convening of the Court, the defendants, through their attorneys, Richard Pettigrew and Sylvan Holtzman, announced to the Court that they had filed a petition to remove the suit to the United States District Court. The Court announced that it would proceed with the hearing and the defendants asked leave to remove themselves from the courtroom and their request for removal was granted. The Court then considered the pleadings and the testimony submitted by the State of Florida, County of Dade and the plaintiff, West Flagler Associates, Ltd.

At 6:00 o'clock P.M. on July 3, 1975, the Court was served with an order of Judge C. Clyde Atkins of the United States District Court remanding said cause to the Circuit Court of Dade County, Florida, whereupon the Court then entered its order of July 3, 1975, at 6:10 o'clock P.M. ordering and directing the defendants, and each of them, to comply with the terms of their contracts. This Court on July 4, 1975, entered an amendment to the order appointing the receiver, in which this Court directed the defendants, and each of them, to feed and care for their animals which were located at Florida Kennels, Inc. and placed in the legal custody of Perrine Palmer, the receiver appointed by this Court. Said order further provided that by failure to comply with the order of the Court the said defendants place themselves in the position of being in contempt of this Court.

It further appears to the Court that application was made by attorneys for the defendants to amend the order of July 4, 1975, and this Court did on July 5, 1975, further amend said order.

The Court on July 5, 1975, further advised the defendants that if they wished to present any motions or evidence at the contempt hearing scheduled for July 7, 1975, commencing at 12:00 Noon, that it would consider any motions or evidence they wished to offer.

On July 7, 1975, pursuant to the Court's announcement of July 5, 1975, the defendants filed a motion to dissolve the injunction, a motion to dismiss the complaint, a motion to quash service of process or to dismiss for lack of jurisdiction and a demand for jury trial. At the hearing on July 7, 1975, the plaintiff and the State of Florida

and Dade County resubmitted in substance the evidence that had been offered in support of the temporary mandatory injunction of July 3, 1975, and the defendants participated therein and cross examined plaintiff's witnesses and submitted testimony in their own behalf. In the course of that hearing as the situation presented itself, the several motions filed by the defendants were orally denied. The Court having heard the testimony, evidence and argument of counsel and being fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. That the defendants' motion to dissolve the injunction be and the same is hereby denied.

2. That the defendants' motion to dismiss be and the same is hereby denied.

3. That the defendants' motion to quash service of process or to dismiss for lack of jurisdiction be and the same is hereby denied.

4. That the defendants' demand for jury trial be and the same is hereby denied.

5. That the temporary mandatory injunction order of July 3, 1975, is hereby approved, ratified and confirmed and republished as of this July 7, 1975 as an order of this Court.

This order is entered nunc pro tunc, as of July 7, 1975.

DONE AND ORDERED this 10th day of July,
at Miami, Dade County, Florida.

/s/ Harvie S. DuVal

CIRCUIT JUDGE

uly, 1975,

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